

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 110234-TP

COMPLAINT AND PETITION FOR RELIEF
AGAINST HALO WIRELESS, INC. FOR
BREACHING THE TERMS OF THE WIRELESS
INTERCONNECTION AGREEMENT, BY
BELLSOUTH TELECOMMUNICATIONS, LLC
D/B/A AT&T FLORIDA.

VOLUME 2

Pages 265 through 415

PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: COMMISSIONER ART GRAHAM
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Thursday, July 12, 2012

TIME: Commenced at 11:47 a.m.
Concluded at 1:06 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

APPEARANCES: (As heretofore noted.)

FLORIDA PUBLIC SERVICE COMMISSION DOCUMENT NUMBER-DAT

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(Transcript follows in sequence from
Volume 1.)

COMMISSIONER GRAHAM: Okay. Staff.

MR. HARRIS: Thank you, Chairman.

CROSS EXAMINATION

BY MR. HARRIS:

Q. Good afternoon -- or it's still morning. Good morning, Mr. Drause. My name is Larry Harris. I'm the staff counsel here, and I just had a few questions for you. I hope that they will be relatively simple.

The first question we had is, I believe on cross-examination you testified about a Georgia statute regarding the definition of a CMRS provider, is that correct.

A. Yes, although it's not a Georgia statute I was referring to.

Q. Okay.

A. It was the federal -- the FCC statute that describes what the requirements are to be a CMRS.

Q. Okay.

A. And the fact that there are two major requirements. One of them is that you use equipment that is capable of moving, which the equipment in question is capable of moving. The second part of that

1 was that and that equipment does regularly move. And
2 under that particular requirement, their equipment by
3 their own testimony has not ever moved since its first
4 day of installation.

5 Q. Okay. But this is a federal statute that
6 you're referring to that was used in the Georgia
7 proceeding, is that correct?

8 A. That's correct.

9 Q. Okay. Thank you.

10 The second question, you have referred to
11 something called a softswitch a number of times. Could
12 you explain to me what that is?

13 A. A softswitch is a kind of switch that switches
14 IP calls. It's used for voice-over-IP. It has the
15 capabilities or it can have capabilities that are
16 similar to a standard Class V end office as well as a
17 tandem switch that classically existed in the legacy
18 telephone network.

19 Q. And I believe in your testimony you refer to,
20 Page 10 specifically, a list of attributes that
21 softswitches might have. Do all softswitches have all
22 of these attributes, or is it sort of a manufacturer of
23 a switch chooses to add some or not?

24 A. Well, I couldn't say definitively that every
25 softswitch has all of the capabilities, but what I was

1 referring to was the McGraw-Hill publication that
2 describes the capabilities of a softswitch. And on the
3 particular pages that I preference in there, Pages 69
4 and 70, it lists the items that I have shown in
5 testimony as being attributes of the softswitch.

6 Q. And with regard to the -- and this would be my
7 term -- the call conditioning attributes of a
8 softswitch, are those something that the customer, the
9 customer that buys a softswitch, would they have to call
10 turn those call conditioning qualities on, or are they
11 inherent in the switch itself?

12 A. That, once again, probably is going to vary
13 from switch-to-switch. Normally you have the ability to
14 provision different elements of the switch in different
15 ways, and presumably you could turn some of those
16 features off or change the extent to which some of the
17 modifications that they have might make to the call
18 would be used.

19 Q. Thank you. And I have one last area of
20 questions, and this is in your testimony on Pages 5 and
21 6, and it is specifically with regard to the Airspan
22 MIMAX pro and the Airspan SDR micro base stations. Are
23 these, and as a layperson, and not an engineer, are
24 these what I would think of as like a WiFi network
25 equipment?

1 **A.** It's quite similar to that. The way that it
2 is being used in this particular case is more like a
3 point-to-point microwave radio is being used. In this
4 particular case we're simply sending traffic from one
5 end of the circuit to another, which happens to be about
6 157 feet.

7 **Q.** Would I, as an individual, go and purchase
8 this equipment for my home or my small office WiFi
9 network?

10 **A.** You wouldn't purchase it for that reason, but
11 if you had an application, let's say you were, for
12 instance, a rancher and you had a need to have
13 communications to several out buildings on your property
14 that might be a mile away, you might apply for the 3.65
15 gigahertz license and buy this type of equipment and use
16 it to extend broadband out to the barn, or the coral,
17 or, you know, wherever you may want to have it.

18 **Q.** And do you have an approximate range for this
19 equipment?

20 **A.** It depends upon two different things -- well,
21 three different things, actually. The first thing is
22 the height of the antenna, the gain of the antenna that
23 is being used on both ends. I did some studies to look
24 at the capabilities of the equipment that they have
25 installed in -- what's it called, Green Cove, I believe.

1 Q. Green Cove Springs.

2 A. Okay. And when I looked at that, using the
3 preferred equipment that Mr. Wiseman refers to in
4 testimony, they would be able to provide service out to
5 something in the neighborhood of a little less than a
6 mile. Now, if you used different equipment and you used
7 large antennas and fixed installations, then the
8 equipment can cover a longer distance, perhaps several
9 miles.

10 Q. And with respect to the receiving part of it,
11 the part that's on the tower --

12 A. Yes.

13 Q. -- is it capable of receiving these signals
14 from multiple sending units or just one fixed sending
15 unit?

16 A. It's able to receive from many different
17 units. In this particular case, the only ones that they
18 are actually interfacing with are the ones that are
19 mounted on the building next to the tower.

20 Q. But, for example, and hypothetically if a
21 company wanted to provide homeowners or small businesses
22 within that radius of the coverage with these sending
23 units, they could do that, and then all of those units
24 could communicate with the tower in that central
25 location?

1 **A.** That could be the case, yes.

2 **MR. HARRIS:** Thank you. I don't have any
3 further questions.

4 **COMMISSIONER GRAHAM:** Commissioners?

5 Hold on, I think I have a question. I heard
6 you and the witness before you talk about call
7 conditioning and call enhancement. Can you give me your
8 definition of the difference between the two?

9 **THE WITNESS:** Yes. When I think of call
10 enhancement, and particularly I think about enhanced --
11 it's enhanced service providers that provide call
12 enhancements, I think about the kinds of services that
13 are provided where the user interfaces with a computer
14 to achieve some type of desired goal.

15 For instance, if you dial a call, and let's
16 say you get -- the number just rings and rings and no
17 one answers. And if I had the ability to, let's say,
18 push the asterisk button on the telephone and get some
19 kind of an interactive voice response coming back from
20 the system that said would you like us to periodically
21 call this number again and when they answer ring your
22 number back? That would be the kind of an enhanced
23 service that one might expect to see.

24 When you talk about voice quality, the kinds
25 of enhancements that they are claiming to make are the

1 same enhancements that exist in the softswitch platforms
2 that are used widely throughout the network. And I'm
3 able to differentiate nothing at all between what it is
4 that they have for equipment and what the capabilities
5 that I believe that equipment has and what the
6 capabilities of a normal softswitch are. I'm not sure
7 if that fully answers the question.

8 **COMMISSIONER GRAHAM:** No, it did.

9 Earlier you testified about your inspection of
10 the other facility in South Carolina.

11 **THE WITNESS:** Yes.

12 **COMMISSIONER GRAHAM:** And you were only able
13 to see but so much of it, you weren't able to get in to
14 look at the way that it was all configured.

15 **THE WITNESS:** That's correct.

16 **COMMISSIONER GRAHAM:** So you can verify --
17 let's use the old engineering black box. You can verify
18 what happens as it gets to the box and you can verify
19 what happens when it leaves the box, you just don't know
20 what's going on inside the box?

21 **THE WITNESS:** Well, yes, that's true. I don't
22 know what's going on inside the box, and I actually
23 don't know whether or not signals are present that they
24 are claiming to be present that are actually passing
25 through the equipment. One of the points, if I could

1 direct you to Exhibit RD-3.

2 **COMMISSIONER GRAHAM:** Okay.

3 **THE WITNESS:** If you look at the building in
4 the upper left-hand corner of the tower, and you will
5 notice you have a green arrow that is leaving the box
6 that's in the upper left-hand corner of that building,
7 it's called a Halo extreme network fast Ethernet switch.

8 **COMMISSIONER GRAHAM:** Yes, sir.

9 **THE WITNESS:** That is the call that Transcom
10 is handing off to Halo. It then goes up to the little
11 green box in the upper left-hand corner of the drawing.
12 It gets converted into a radio signal. It goes up to
13 the antenna and then comes back down on the red line.
14 And you will notice the red line passes through the Halo
15 Airspan SDR micro base station, and then goes directly
16 into that very same Halo extreme network fast Ethernet
17 switch.

18 So what I'm unable to know is do they actually
19 push the traffic up over that wireless link, or do they
20 simply provision that fast Ethernet switch so that the
21 traffic will flow from the Transcom router located just
22 below that switch through the switch and back out to the
23 Halo router. And from an engineering perspective, if I
24 were designing a network I would want to design my
25 network so that it had the fewest number or pieces of

1 equipment possible, and certainly minimize the types of
2 equipment that are prone to failure. And when you have
3 electronics sitting up on towers that are subject to
4 getting hit by lightning, that's a point of failure that
5 you are introducing.

6 So from a technical perspective, it would be a
7 lot more desirable to basically pass the traffic
8 directly through that switch. And in testimony I have
9 said one of the things that you might do is you might
10 actually take the connection that goes to that MIMAX
11 Pro-V, remove it from the fast Ethernet switch, take the
12 connection that's going over to the Halo Airspan SDR
13 micro, remove it from the switch, and put a piece of
14 Ethernet cable in between those two ports. If you did
15 that the traffic would simply flow into the switch
16 through that Ethernet cable, back into the switch, and
17 then out. And if you did that you eliminate all of the
18 radio equipment that is subject to a higher degree of
19 failure.

20 And Mr. Johnson has testified that if you were
21 to do that that the signal would flow through and the
22 call would complete in the same fashion as it does
23 today. And that it's why I make a statement in my
24 testimony that the Airspan equipment that is shown here
25 has the same ability to originate a call as does that

1 piece of Ethernet cable that could be used to replace
2 it, which is no ability whatsoever.

3 **COMMISSIONER GRAHAM:** Would you still get the
4 call conditioning that they are speaking of if you
5 routed it the way that you are speaking of?

6 **THE WITNESS:** Yes. The call conditioning is
7 actually implemented back at the Transcom data center,
8 or that's what they have testified to, so that would not
9 change the call conditioning at all.

10 **COMMISSIONER GRAHAM:** I have no other
11 questions.

12 Redirect.

13 **MR. HATCH:** We have no redirect.

14 **COMMISSIONER GRAHAM:** Sir, thank you for your
15 testimony.

16 **THE WITNESS:** Yes, sir.

17 **COMMISSIONER GRAHAM:** Exhibits.

18 **MR. HATCH:** AT&T would move RW-1 through 3,
19 which is 25, 26, and 27, I believe.

20 **COMMISSIONER GRAHAM:** Exhibit 25 and 26?

21 **MR. HATCH:** Oops, I'm sorry. Wrong numbers
22 there at the end. It is 31 through 33.

23 (Exhibit 31 through 33 admitted into
24 evidence.)

25 **MR. PERKO:** No objection.

1 **COMMISSIONER GRAHAM:** And you are correct, 31,
2 32, 33. We have not done 25 and 26 yet.

3 Any other exhibits?

4 Okay. Next witness.

5 **MS. LARSON:** We actually had a couple of
6 housekeeping matters, if we could perhaps address those
7 really quickly.

8 **COMMISSIONER GRAHAM:** Sure.

9 **MS. LARSON:** One has to do with the exhibit
10 that was marked Exhibit 37 during Mr. Majoue's
11 cross-examination of Mr. Neinast.

12 **COMMISSIONER GRAHAM:** Okay.

13 **MS. LARSON:** And that is actually already
14 attached to Mr. Wiseman's testimony at RW-2.

15 **COMMISSIONER GRAHAM:** Okay.

16 **MS. LARSON:** So I think we can forgo any
17 further discussion about the admission of Exhibit 37
18 based on the fact that it is already attached to Mr.
19 Wiseman's testimony.

20 **MR. HATCH:** That's fine. We have no objection
21 to that. I'm assuming they are withdrawing 37, or will
22 rely on the exhibit as attached to Mr. Wiseman's
23 testimony.

24 **COMMISSIONER GRAHAM:** Do we run into any legal
25 problems since we already notified this as 37, or can we

1 just refer to what used to be 37 as that exhibit?

2 **MR. HARRIS:** That number has been assigned,
3 but it won't be admitted into the record, and,
4 therefore, it just gets ignored.

5 **COMMISSIONER GRAHAM:** Okay. Simple enough.

6 **MS. LARSON:** Great. And then the second is
7 attached to Mr. McPhee's testimony, I think it's Exhibit
8 JSM-5, included in that exhibit is Halo's radio station
9 authorization, and it's actually the incorrect version.
10 There is a new effective date for that authorization,
11 and we, I think, got an approval or agreement with both
12 AT&T and Staff Counsel that we can admit Halo's radio
13 station authorization with the new effective date that
14 would be the most current RSA.

15 **MR. HATCH:** We don't have any objection.

16 **COMMISSIONER GRAHAM:** Okay. So we're just
17 going to switch out the exhibit as it sits in the book,
18 or are we just going to add another exhibit?

19 **MR. HARRIS:** I would suggest adding another
20 exhibit, but you could do it either way. You could
21 switch them.

22 **MR. HATCH:** Just add a new one just to make it
23 clear what it is.

24 **COMMISSIONER GRAHAM:** So do we want to offer
25 that as an exhibit now?

1 **MS. LARSON:** Sure.

2 **COMMISSIONER GRAHAM:** And we will make that
3 Exhibit 38.

4 **MS. LARSON:** That sounds great. And just to
5 make sure the record is clear for our court reporter,
6 and I don't know how you want to handle this, but we did
7 refer to Exhibit 37 in terms of cross-examination. I
8 don't know if we want to have that struck from the
9 record and have it referred to as the new exhibit number
10 or leave it as is and just marked as identification
11 only.

12 **COMMISSIONER GRAHAM:** I think we will leave it
13 as is, because we have already identified with 37 is
14 exactly the exhibit, and what was it you said it was
15 before?

16 **MS. LARSON:** It is RW-2, an exhibit to Russ
17 Wiseman's testimony.

18 **COMMISSIONER GRAHAM:** I think the court
19 reporter has got that.

20 **MS. LARSON:** Okay. Just making sure for our
21 record.

22 **COMMISSIONER GRAHAM:** All right. Now 38, do
23 you have a short title for that?

24 **MS. LARSON:** I do. Halo's radio station
25 authorization.

1 **COMMISSIONER GRAHAM:** Okay. And if there is
2 no objections, we will enter 38 into the record.

3 Mr. Hatch, is there any objection to entering
4 38 into the record?

5 **MR. HATCH:** I don't believe so, Mr. Chairman.
6 We're trying to confirm that the actual original was
7 part of McPhee's testimony. We haven't found it yet.

8 **MS. LARSON:** Oh. It was included as part of
9 the Wisconsin staff responses. And I believe I referred
10 to it as JSM-5. It's actually JSM-1 as it is labeled
11 here, and it is the very first page of that exhibit.

12 Did you find it?

13 **MR. HATCH:** Yes, that's fine. It's Page 82 of
14 82 of JSM-1. We were just confused by the reference.

15 **COMMISSIONER GRAHAM:** Okay. So we will enter
16 38 into the record.

17 (Exhibit 38 marked for identification and
18 admitted into the record.)

19 **COMMISSIONER GRAHAM:** Any other housekeeping?

20 **MS. LARSON:** I know of no others at this time.

21 **COMMISSIONER GRAHAM:** Staff.

22 **MR. HARRIS:** None from us.

23 **COMMISSIONER GRAHAM:** Sounds good. Next
24 witness.

25 **MS. LARSON:** Halo calls Russ Wiseman.

RUSS WISEMAN

1
2 was called as a witness on behalf of Halo Wireless,
3 Inc., and having been duly sworn, testified as follows:

DIRECT EXAMINATION

4
5 **BY MS. LARSON:**

6 Q. Mr. Wiseman, please state your name and
7 business address for the record?

8 A. Russell Wiseman, 2351 West Northwest Highway,
9 Dallas, Texas.

10 Q. And you have been presworn in today, is that
11 correct?

12 A. That's correct.

13 Q. And did you cause to be filed prefiled
14 testimony on May 11th, 2012, in this proceeding?

15 A. I did.

16 Q. And do you have any changes or corrections to
17 that prefiled testimony?

18 A. I do not.

19 Q. And if you were to ask you the same questions
20 that appear in the Prefiled Testimony here on the stand
21 today, would your answers be the same?

22 A. They would be.

23 **MS. LARSON:** I would request Mr. Wiseman's
24 Prefiled Testimony be entered into the record as if
25 read.

1 **COMMISSIONER GRAHAM:** We will enter Mr.
2 Wiseman's Prefiled Direct Testimony into the record as
3 though read.

4 **Q.** And, Mr. Wiseman, there were also two exhibits
5 attached to your testimony, is that correct?

6 **A.** Yes, that's correct.

7 **Q.** And do you have any changes or corrections to
8 those exhibits?

9 **A.** No, I don't believe so.

10 **MS. LARSON:** We would offer those exhibits, as
11 well.

12 **COMMISSIONER GRAHAM:** Duly noted.

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1 **INTRODUCTION**

2 **Q: Please state your name, title and business address.**

3 A: My name is Russ Wiseman. I am the President and Chief Operating Officer for Halo
4 Wireless, Inc. ("Halo"). My business address is 2351 W. Northwest Highway, Suite
5 1204, Dallas, TX 75220. I am responsible for all operations at Halo, including sales,
6 marketing, network and system operations, and inter carrier relations.

7 **Q: Please state your educational background and experience.**

8 A: I received an MBA in International Finance from Fordham University Graduate School
9 of Business, New York, N.Y. in 1991. Before then I obtained a Bachelor of Electrical
10 Engineering from Manhattan College School of Engineering, New York, N.Y., in 1986.
11 My prior work experience, from most recent (prior to being engaged by Halo):

12 From 2003 to 2010 I was the principal in RA Wiseman & Associates. I
13 performed management consulting, specializing in strategic business and market
14 planning, product and service development, and complex program management in
15 technology-based industries. This included engagements with wireless, cable and other
16 ventures, with particular emphasis on implementing business plans for providers and
17 companies that integrate Internet, voice communications and video services or
18 applications with other business operations. Between 2000 and 2002 I worked for
19 Nucentrix Broadband Networks as the Senior Vice President – Internet Operations. As
20 part of those responsibilities, I helped the company develop and implement its wireless
21 broadband services using MMDS in small to medium sized markets. From 1999 to 2000
22 I was Executive Vice President/Chief Operating Officer for Flashnet Communications,
23 Inc., prior to their ultimate sale to Prodigy and then AT&T. From 1997 to 1999 I was

1 Chief Marketing Officer/VP Strategic Planning for PrimeCo Personal Communications,
2 where I managed a strategic planning, corporate marketing and pre paid services staff of
3 60 people responsible for strategic planning, corporate development, product
4 development, product management, pricing strategy, promotions planning, market
5 research and planning and competitor analysis. From 1992 through 1997 I was
6 Managing Consultant/Practice Leader - Communications and Multimedia Practice - U.S.
7 Consulting for PA Consulting Group, and was charged with bringing communications
8 industry breadth and depth to the company. Domestic and international engagements
9 focused on strategic business and market planning, product and service development,
10 and complex program management.

11 From 1986 through 1992 I worked for Verizon Communications, first as
12 Engineer - Central Office Design & Engineering, where I designed and implemented
13 fiber optic/SONET and digital switching networks in the NYC and Mid State regions.
14 Beginning in 1990, I was Staff Director, Corporate Planning. My duties included
15 identifying, analyzing and recommending major business initiatives in communications,
16 software and services industries. I was involved in M&A assessments for the purchase
17 and sale of applications software and IT services businesses, including the assessment
18 and ultimate sale of NYNEX Mobile to Bell Atlantic Mobile.

19 **Q: Are you an attorney?**

20 A: No.

21 **Q: On whose behalf are you appearing?**

22 A: I am appearing for Halo Wireless, Inc. ("Halo").

23 **Q: What is the purpose of this Testimony?**

1 A: I will respond to the proffered Direct Testimonies of J. Scott McPhee and Mark Neinast
2 from AT&T. I will also provide additional testimony relevant to the facts in this case
3 that is intended to inform the Commission and assist it in ruling on the matters before it
4 in this proceeding.

5 **Q: In determining the merits of AT&T's Complaint, what are you asking of this**
6 **Commission?**

7 A: What Halo is asking this Commission to do is to look past the baseless allegations, gross
8 distortions, and abject hyperbole of AT&T, and focus on the facts in this case. The facts
9 here are that Halo interpreted and applied telecommunications laws and rules in a novel,
10 but legal way, in order to bring real tangible value to Florida consumers. We believe we
11 are achieving this goal, but in a way that impairs AT&T's to obtain access charges it is
12 not lawfully due. The effect of Halo's participation in the Florida broadband
13 communications market is to enhance service and lower cost for a great number of
14 consumers. AT&T would prefer to retain excess, subsidy laden profits than achieve
15 these results. We did not breach the AT&T interconnection agreements ("ICAs"). We
16 did not "disguise" the true nature of Halo's traffic with any intent to "deceive" AT&T,
17 and we do not believe allowing AT&T to discontinue performance under the ICA is an
18 appropriate and fair remedy for the grievances AT&T has brought before this
19 Commission.

20 Halo's business model does not start with, or conform to, traditional
21 interpretations of what constitutes a CMRS service. Halo is not a traditional CMRS
22 provider. Halo has applied and interpreted existing rules in different, but legal, ways, all
23 with two primary goals: (1) to enable the growth of low cost, high value IP

1 communication services for all Americans, and (2) to bring advanced broadband services
2 to under-served and un-served communities.

3 Halo has attempted to achieve a legitimate competitive market advantage through
4 the use of an innovative business strategy, backed by millions of dollars in capital
5 investment, and NO ASSURANCE OF A RETURN ON THIS INVESTMENT. On the
6 other hand, AT&T is guaranteed to make a profit from Halo's services, through the
7 payment of termination charges, transit fees, and certain facility charges, all of which
8 have implicit, and very healthy, profit margins built into AT&T's rates and charges, and
9 that CONSUME ALMOST HALF OF EVERY DOLLAR IN REVENUE HALO
10 GENERATES. HALO, ON THE OTHER HAND, WAS NOT, AND IS NOT,
11 ASSURED OF A PROFIT, OR A RETURN ON THE INVESTMENT IT HAS MADE
12 TO CREATE ITS BUSINESS.

13 Threatened by the outcomes Halo's model enables, AT&T and the ILECs have
14 decided that it can discredit Halo in the minds of regulators by trying to force-fit both
15 Halo and Transcom into old, legacy models that predate modern communications
16 capabilities and open competition by carriers and non-carriers. This is the path of least
17 resistance for over-burdened regulators trying to deal with a highly complex, dynamic
18 industry. I can only assume because they are not entirely confident in prevailing based
19 on this strategy alone, the ILECs have decided to go one step further and engage in a
20 systematic and shameless smear campaign, the goal of which is to sully Halo's image
21 and integrity in the eyes of regulators by making a number of false allegations, such as
22 the claim that we are disguising call detail records to "make traffic appear local," and
23 associating Halo with other bad actors in the industry. I only hope that this Commission

1 is not misled by these tactics, and see them for what they are: a clear attempt to prevent
2 forces the ILECs cannot control from achieving “undesirable outcomes” like increasing
3 access line erosion, moving minutes off the PSTN and, yes, even accelerating the demise
4 of access charges.

5 The fact of the matter is that Halo is a wireless carrier. Halo communicates with
6 its high volume end user customer over wireless transmitting and receiving facilities in
7 each MTA. From a Halo perspective the high volume customer is simply a
8 “communications intensive business customer” – much like any large enterprise
9 operating a PBX – that is originating traffic from wireless CPE. The traffic is then
10 delivered to AT&T, exactly as required, and as specified, in the Amendment clauses
11 contained in each and every AT&T ICA. Halo’s high volume end user uses wireless
12 mobile stations within radio coverage of each tower site. Halo’s network is architected
13 in such a way that only traffic destined to a terminating carrier in an MTA is processed
14 by the base station in that MTA. Thus, Halo contends all high volume customer traffic is
15 IntraMTA wireless reciprocal compensation traffic that is terminated by AT&T or
16 transited to another terminating carrier.

17

18 HALO’S BUSINESS MODEL

19 **Q: Can you explain the basic intent and mission of Halo?**

20 A: Halo was founded with the intent of providing broadband services to un-served and
21 under-served markets around the United States. The principals behind Halo have
22 recognized for quite some time, at least six years from what I can tell from presentations
23 I have seen, that wireless could be a solution to the market imperative of providing

1 broadband services to under served and un-served communities throughout the United
2 States. People involved with Halo well before my time considered, developed, and
3 attempted to execute various strategies to achieve this goal, including applying for
4 federal broadband stimulus grants and partnering with local LECs as business and
5 channel partners. However, various obstacles conspired against these efforts.

6 The primary impediment in making this happen was capital. It is very expensive
7 to build wireless broadband networks. And getting a return on investment, especially in
8 relatively low density markets, is difficult at best and highly uncertain. Capital funding
9 has been the primary impediment to wireless broadband deployment since its
10 technological inception. While federal stimulus programs have attempted to over come
11 this impediment, it remains the primary barrier to wide-scale, sustainable deployments.
12 Halo's owners and management spent several years trying to raise the money necessary
13 for deployment. In fact, at one time, they propositioned RLECs, unsuccessfully, to serve
14 as business partners.

15 Halo faced other impediments, namely access to spectrum in sufficient amounts
16 and with the right physical characteristics to support wireless broadband services,
17 availability of viable wireless broadband network and consumer device solutions, and
18 interconnection agreements with a broad base of ILECs for the exchange of traffic.

19 **Q: How did Halo overcome these obstacles?**

20 A: One of these obstacles, access to spectrum, was resolved with the FCC's opening of the
21 3650-3700 Mhz band for commercial use in late 2007. From 2008 through the better part
22 of 2009, with the intent of providing interconnected mobile voice, as well as broadband
23 data services, Halo attempted to secure interconnection agreements with the RBOCs,

1 notably AT&T, Qwest, and Verizon. During the same time, the 802.16 WiMAX
2 standard evolved to include support for mobile services, considered by Halo at the time
3 as a key competitive market entry requirement. And several vendors emerged during this
4 time with what was considered then as viable wireless broadband technology platforms.

5 However, the major challenge of being able to fund, and sustain, a viable retail
6 broadband service provider business remained. While a few wireless operators have
7 proven it possible to establish wireless broadband operations on a relatively small scale,
8 the economics of this business naturally impede the breadth of market impact they can
9 have, not to mention how long they can survive. A different business model was needed
10 if wireless broadband was going to happen on any kind of scale.

11 **Q: Can you explain how Halo's business model was developed?**

12 It was around this time, in 2008, when regulatory counsel for Halo saw a potential
13 solution. Transcom Enhanced Services, Inc. ("Transcom"), which we freely admit has
14 overlapping ownership with Halo, was competing as a provider of wholesale IP voice
15 termination services, with a particular focus on serving smaller, emerging service
16 providers, and providers of VoIP services. As network footprint is a key competitive
17 variable for companies in this space, Transcom was naturally looking for ways to expand
18 its traffic termination capability. Doing so makes Transcom's VoIP provider customers
19 stronger and more viable as competitive alternatives to traditional landline phone
20 services. And it obviously makes Transcom a more attractive partner to those providers.
21 Regulatory counsel for Halo and Transcom saw the potential to combine the forces that
22 were making the wireless broadband business more viable, with the rules and precedents
23 related to both Enhanced Service Providers ("ESPs"), which Transcom was confirmed to

1 be in several court decisions in 2003, 2005, 2006, and 2007, and Commercial Mobile
2 Radio Service Providers (“CMRS”), which Halo intended to be.

3 In short, the basic idea was for Halo to offer ESPs, along with other
4 communications-intensive business end users that have their own private IP networks
5 and need the ability to connect to the PSTN on a “local” basis, a telecommunications
6 exchange service that used the same wireless network that would also deliver broadband
7 services to consumers and small businesses. In so doing, Halo would have a major
8 source of revenue that could effectively subsidize the build out, operation, and delivery
9 of rural broadband. The revenue would allow Halo to do so in a financially sustainable
10 way, without the need for government subsidies, without customer worry of Halo going
11 broke, and on a scale that could put a real dent in the nation’s goal of getting broadband
12 to rural communities.

13 **Q: What were the keys to this strategy?**

14 A: First, it would be necessary for Halo to enter into interconnection agreements (“ICAs”)
15 with major carriers for the exchange of telecommunications traffic. Given its intention to
16 offer common carrier, interconnected commercial mobile services, it was natural for
17 Halo to seek CMRS ICAs in this regard. The key was that such agreements also needed
18 to allow the termination of traffic from Halo’s ESP customers. Halo believed the ICAs it
19 adopted and amended with AT&T supported this because ESPs are “end users.” And,
20 based on regulatory and court precedents, status as an ESP conveys that as purchasers of
21 telecommunications services they originate and terminate traffic; can terminate a call,
22 and then originate further communications as part of their enhanced services offerings;
23 are not subject to access charges; and are not interexchange carriers (“IXCs”). Halo’s

1 ESP customers would be originating traffic on the Halo network using wireless
2 equipment and services that we contend meet the statutory definition of CMRS.
3 Therefore, our ESP customer's "end user" status would make the traffic they originate
4 "wireless originated," consistent with the AT&T ICA terms. Our position today is that if
5 it was determined that any equipment or services didn't meet the CMRS requirements
6 we would immediately undertake to address any deficiency so that our services came
7 into compliance. But, any such action, assuming it was deemed necessary, would not
8 change our position that traffic from our ESP customers is non-access. The ICAs Halo
9 executed with AT&T contains an addendum that specifically states that traffic needs to
10 "originate through wireless transmitting and receiving facilities before Carrier delivers
11 traffic to AT&T for termination." AT&T might have had, or currently has, a different,
12 perhaps conventional idea of what this provision means. But we contend Halo is doing
13 exactly what this provision requires, and was intended to address, when it was written.

14 Second, Halo next needed to determine where base stations needed to be located
15 in order to provide telecommunications exchange access services. Applying the service
16 boundaries of CMRS providers, Metropolitan Trading Areas ("MTAs"), as opposed to
17 traditional LEC service boundaries like states and Local Access and Transport Areas
18 ("LATAs"), it was determined that at least one base station needed to be located in each
19 MTA where service would be originated or terminated. With AT&T ICAs in 21 states
20 spanning 28 MTAs, we set about locating towers in these 28 MTAs.

21 Finally, from a network architecture and back office stand point, Halo's service
22 and related billing and traffic management systems had to be designed to ensure that
23 only calls originated by ESP customers in an MTA were routed for termination in that

1 same MTA. This was an important step in ensuring that Halo was fully compliant with
2 IntraMTA and InterMTA compensation rules, as they were understood to apply to the
3 very non-traditional Halo business model. In other words, it was a deliberate effort to
4 make sure that the terminating carriers were properly compensated. Also, Halo's system
5 had to be designed to support more than one high volume customer. While it is true that
6 Transcom is Halo's only paying customer today, this was not the goal and is still not the
7 goal. Inserting a Charge Number into the call records of Transcom-originated traffic,
8 which I will discuss further below, was intended to establish Transcom as the financially
9 responsible party for the traffic. As other customers were added, Halo would be able to
10 distinguish between Transcom's traffic, and other customer's traffic, as both would be
11 flowing over the same Halo trunk groups.

12 **Q: After identifying this business model, what was Halo's next step?**

13 A: Halo then set about executing its business model in 2009, focusing on securing those
14 ICAs I mentioned earlier, designing and architecting its network, and selecting a
15 WiMAX technology vendor and deployment agent. Once interconnection with AT&T
16 was secured, the primary focus turned to identifying a wireless broadband platform that
17 could efficiently support the services Halo wanted to provide to both high volume and
18 low volume end users. Many platforms were examined, and many were rejected for one
19 reason and one reason alone, and that was the lack of FCC-certified customer premises
20 equipment ("CPE") in the 3650 band. In fact, Halo had initially selected the platform
21 supplied by Alvarion, Inc. However, when it became clear to Halo that Alvarion did not
22 have an FCC-certified CPE device, it was forced to abandon this choice and seek another
23 solution.

1 Halo then selected the platform from Airspan Networks. This decision was based
2 on two factors. The first was that Airspan claimed to have a commercially ready USB
3 consumer CPE form factor. This form factor has obvious benefits for a company
4 desiring to provide mobile broadband services to consumer customers. The second
5 advantage Airspan brought to the table was a commercially ready 802.16(e) solution.
6 Without getting into too much technical detail, the WiMAX standards for wireless
7 broadband at the time were delineated at 802.16(d) for fixed wireless networks, and
8 802.16(e) for mobile networks. In 2009, there were many commercially available
9 802.16(d) solutions in the market place. But 802.16(e) solutions were just beginning to
10 come to market. So Airspan's fully mobile solution was ideal for Halo's business model,
11 and a contract was signed with an Airspan reseller in early 2009.

12 These efforts came to fruition in the spring of 2010, and the company began the
13 process of executing leases on its base station sites. This process entailed working with
14 tower owners, such as American Tower and SBA Communications, to identify towers
15 that met about a dozen Halo criteria.

16 **Q: Why did Halo choose the tower site locations that it did?**

17 **A:** Because it wanted to provide broadband services to un-served and under-served rural
18 communities, and bring more competitive choices for broadband service to people living
19 and working in these areas. Halo has been accused, in other states, of having no intention
20 of serving rural communities. Aside from being totally baseless, that accusation also
21 defies any sort of reason or logic, for why would we have incurred the cost and
22 operational complexity of locating base stations in remote, rural locations if our true
23 intention was to simply use these towers as wireless "gateways" for high volume

1 customers? It would have been far cheaper and simpler for us to locate base stations in
2 or near major metropolitan areas. Bandwidth is cheaper there, with far greater choice in
3 backhaul providers. Traveling to and from the tower sites, for network maintenance and
4 repair purposes, common with wireless base station equipment subject to weather and
5 other acts of God, is both cheaper and quicker. There are far more tower sites to choose
6 from, lowering tower rental expense. I could go on. But the point is the same. We made
7 it far more expensive and difficult for ourselves by selecting the tower locations we
8 selected. Our actions clearly establish an intent to serve rural communities, a fact
9 subsequently affirmed by the amount of time, money and effort expended on low
10 volume consumer marketing efforts.

11 The primary attributes we looked for in choosing the tower site locations were
12 the extent of existing broadband services competition, the population size, the population
13 density, the local market topography (for RF propagation), and the availability of back
14 haul capacity to serve the tower sites. In the end, some locations selected were a bit
15 smaller, and some a bit larger, but we were able to meet our goal of finding suitable
16 towers in locations that would allow us to meet the twin goals of serving low volume
17 rural consumers and small businesses in under-served communities and serving high
18 volume business intensive ESP customers.

19 The last point I'd like to make here is in response to the assertion that the
20 markets Halo selected for its towers are not under-served. If there are more than two
21 providers of broadband service in a town, does that make the market fully competitive,
22 and thus "adequately served"? I would say no, or at least, not necessarily, because in
23 almost every instance there is a cozy duopoly of cable companies and incumbent LECs

1 with very high market share, and then a small number of new entrants trying to entice
2 consumers to switch. Consumers, being rational beings, are reluctant to switch to
3 someone new or that they've never heard of before. They want to see staying power.
4 They need to see presence, through advertising and word of mouth referrals. All of this
5 takes time and money, something in short supply for any new entrant with limited cash
6 flow and capital. Even when there are a number of alternative providers, the broadband
7 market does not demonstrate the characteristics of a fully competitive market (e.g.,
8 constantly improving service, declining prices, more balanced market share among the
9 providers). Halo believes, even in locations where there are a number of new entrants
10 competing with the incumbent providers, that it can change these dynamics in favor of
11 new entrants because its business model allows it to internally subsidize service delivery
12 to "low volume" consumers through the services delivered to its "high volume"
13 customers. Put another way, Halo could charge a lower price to the consumer customer
14 because it did not have to recover all of its common costs from them.

15 **Q: Can you describe the functions of Halo's base stations?**

16 Halo's base stations are the wireless access points where it collects and delivers voice
17 and data traffic from end-user customers who purchase wireless services from Halo.
18 These wireless customers also purchase or lease wireless CPE that, when sufficiently
19 proximate to a base station, allows them to communicate wirelessly with that base
20 station. The end user customer can then originate telecommunications within the MTA.

21 Under the Halo configuration, and with respect to voice services, only calls
22 coming from customers connected to a base station in an MTA, and where the called
23 numbers are also associated with a rate center within the same MTA, will be routed over

1 the AT&T interconnection trunks for transport and termination in the same MTA. The
2 service architecture supporting Transcom is designed so that any communication
3 addressed to a different MTA would fail, *e.g.*, not complete.

4 Halo also has a “consumer” product that allows calls received by Halo from
5 customers connecting to a base station within an MTA destined to a called party in a
6 different MTA to be completed. There is yet another “consumer” product whereby calls
7 to and from Halo customers not accessing the Halo network at a base station access point
8 (*e.g.*, customers accessing their voice services over another broadband Internet
9 connection) can be completed. This latter product is essentially an “over the top”
10 nomadic VoIP offering. Calls related to the “nomadic” offering, however, *are not* routed
11 over the AT&T interconnection trunks. Rather, those calls are handled by Halo’s IXC
12 service provider, and that IXC provider pays all access charges that are due. In other
13 words, when a LEC receives a Halo call for termination in an MTA, the call will (a)
14 have been originated by an end user customer’s wireless equipment communicating with
15 the base station in that same MTA, and (b) by design and default, be intraMTA as
16 defined by the FCC’s rules and its decision that the originating point for CMRS traffic is
17 the base station serving the CMRS customer.

18 **Q: How do you respond to the argument made by the ILECs and RLECs in other**
19 **states that Halo’s wireless network serves no useful engineering purpose?**

20 **A:** The ILECs and RLECs in other states have recently argued that Halo’s wireless network
21 only serves as a “transport” link for traffic exchanged between Halo and Transcom, that
22 the wireless network serves no useful “engineering purpose,” and that it could be
23 replaced by a Cat 5 cable. They also make a big deal about the location of Transcom’s

1 wireless station, and the fact that it's "only" 150 feet or so from Halo's base station
2 antennas, as if there's some magic minimum distance that must be exceeded before a
3 wireless system is legitimately wireless, and this 150' distance does not meet the magic
4 threshold. Of course, as we all know, there is no such magic distance.

5 First, the wireless network is required in order for Halo to be a wireless service
6 provider, and its services to be considered CMRS. Again, I would point out that if Halo
7 were conceived as a "scam" or "scheme," we could have either not deployed these
8 wireless systems, and merely claimed to have done so, or we could have used that Cat 5
9 cable and not the wireless system. Neither were done, though if you buy our opponents'
10 argument, we could have improved the quality of service by some unsubstantiated
11 amount, to say nothing of saving over \$1.3M in upfront capital expense, and over half a
12 million dollars annually in recurring expense. Like the tower site issue, if Halo were set
13 up to defraud, every decision made seems to have lessened the "ill gotten gains" the
14 company "schemed" to realize. In essence, to accept the our opponents' story line, you
15 have to believe that the people smart enough to conceive of such a creative and
16 sophisticated business model somehow became quite dumb when it came time to
17 execute the "fraudulent scheme" and profit from it.

18 Second, the wireless link offers customers, including Transcom, the ability to
19 locate their CPE anywhere within the RF footprint of the tower, which in many
20 instances, is an area of approximately 75 square miles, and move it about this area
21 however they choose. If the wireless CPE were replaced by a Cat 5 cable, as our
22 opponents have suggested, then Halo would be dictating to customers, as a common
23 carrier, where and how they needed to access the Halo network. This is neither very

1 customer friendly, nor consistent with the basic premise of CMRS services. Like the ado
2 that is made about the relatively low number of Halo retail customers, we're being
3 evaluated against some ill-defined, improper, irrelevant, and totally fictional standard of
4 what the ILECs assert "should reasonably be" at a discrete point in time, as opposed to
5 what is proper and legal.

6 Allow me to give an example. When I use WiFi service at a Starbucks, I'm
7 probably only 30' from the WiFi access point in the store. Does this mean I should take
8 a 30' Cat 5 cable and connect it up to the WiFi router? If not, why not? There's most
9 likely a spare Ethernet port or two for me to use. I don't do this because it's not
10 convenient for me to do so, it's not how Starbucks wants customers to access their
11 network, and if Starbucks desires to allow more than just me to use their network, they
12 prefer (demand actually) I use wireless access because more users can access the
13 network this way. In essence, our opponents are looking at a situation where I'm the
14 only customer in the Starbucks café, and saying, hey, you don't really need to connect
15 wirelessly. You can replace the wireless with a Cat 5 cable. That wireless system you're
16 using "serves no engineering purpose." At this point, who among us wouldn't toss our
17 double mocha latte's at the engineer who suggested this and advise him to go back to the
18 lab?

19 Lastly, you might ask, why then was Transcom's CPE located at the tower? The
20 answer is because it was convenient for them to do so, and it offered Halo certain airlink
21 capacity efficiencies beneficial to serving both high volume and low volume customers
22 off the same network. We made design and execution decisions based on where we were
23 going, not where we were forced to stop due to ILEC litigation. What was legal, not

1 what we could get away with. What was customer friendly, not what was minimally
2 required to meet some “engineering” goal or incumbent Diktat. If it would satisfy this
3 Commission, we will be happy to ask Transcom to relocate their CPE. All we’d need to
4 do is decide what the magic distance is.

5 **Q: After the ICAs were entered into and the tower sites deployed, what marketing**
6 **efforts did Halo undertake?**

7 A: Halo’s marketing efforts included hiring a dedicated marketing agency to oversee and
8 direct sales and marketing efforts, establishing a sales call center operation to handle
9 tele-sales and customer service functions, developing and deploying sophisticated
10 service provisioning applications to enable automated and rapid account activations,
11 hiring direct sales staff to conduct “door-to-door” sales campaigns in selected markets,
12 and exerting great pressure on our WiMAX equipment supplier to deliver CPE devices
13 desired most by customers, and most fitting Halo’s mobile service intentions. In all,
14 Halo spent roughly \$300,000 on consumer marketing efforts from the third quarter of
15 2010 through the fourth quarter of 2011.

16 **Q: Did Halo have any agents or representatives working on retail marketing?**

17 A: Yes. Halo has employed a Dallas-based marketing and PR agency since pre-launch to
18 design, implement and manage our consumer-centric sales and marketing efforts. We
19 have also hired independent direct sales people to perform local sales activities in towns
20 where our base stations are located.

21 **Q: Have you personally been involved in these retail marketing efforts?**

22 A: Yes. In addition to overseeing all our strategic marketing decisions, programs, and plans,
23 I have personally spent time knocking on doors as part of our sales efforts, primarily to

1 gain a deeper understanding of our target customers' broadband service requirements
2 and expectations, disappointments and frustrations, and enablers and barriers to
3 adoption.

4 **Q: Does Halo have any retail customers in Florida, and if not, why not?**

5 A: Halo has deployed base stations in 28 MTAs in 21 states across the United States. We
6 have not yet started retail consumer marketing in Florida, and we do not presently have
7 retail consumer customers in Florida. However, this is not because we lack the intent or
8 interest in serving retail consumers in Florida. The business plan and operating budget
9 prepared in 2010 contemplated launching retail sales and marketing efforts in each MTA
10 throughout 2011 as cash flow ramped up from our high volume offerings. In other
11 words, we needed to allow high volume service cash flow to ramp up following launch
12 of these services to generate the cash required to fund retail marketing efforts.
13 Regrettably, we were in the early stages of retail marketing in 2011, having spent several
14 hundred thousand dollars on retail sales and marketing, when the ILEC litigation started
15 siphoning the excess cash flow destined for these programs.

16 Halo does have approximately 35 individual retail customers in other states and
17 MTAs. In order to maximize the return on marketing dollars spent, and build the largest
18 base of consumer customers possible, the decision was made to offer the Halo service
19 initially as a "Beta" or free trial service, with the intention of ultimately converting these
20 customers to paid customers over time. I will point out that we have one less retail
21 customer now that AT&T disconnected Halo's trunks in Tennessee, rendering our retail
22 voice service useless in Tennessee, as our Tennessee customers can no longer receive

1 inbound calls. In any event, the current retail customer level is lower than we had hoped
2 to obtain given the time and money spent to acquire these customers.

3 **Q: Why is the current retail customer level lower than Halo had hoped or anticipated?**

4 A: When we launched services in the summer of 2009, Airspan surprised us by giving us
5 two bits of bad news. The first was that its USB device, while physically ready, was not,
6 in fact, certified by the FCC. This meant that we could not offer it for sale to consumers.
7 The second bit of bad news was that the OEM supplier for its indoor wireless terminal
8 had ceased supplying the device. Thus, we had no consumer device to offer customers.
9 Airspan ultimately found an alternate supplier of an indoor unit, and that is the device
10 we offer consumers today. It is not ideal, but it is minimally suitable for our needs. We
11 began consumer marketing efforts during the fourth quarter of 2010 using this device,
12 and experimented with several marketing strategies, including print, direct mail and
13 online advertising. The goal in early 2010 was to find the most efficient way to acquire
14 customers, while we waited for the primary device, the USB dongle, to be FCC certified.
15 During this time, hundreds of thousands of dollars was spent on marketing efforts. While
16 our programs did not yield large numbers of absolute customers, it is important for this
17 Commission to keep several important factors in mind.

18 The first is that Halo had just launched its high volume services and was ramping
19 up its revenue and cash flows. We intended to fund the consumer product with the cash
20 flows resulting from the high volume product, so funds to support consumer marketing
21 efforts were limited in the early months. Second, Halo was a new brand with no
22 established equity with consumers. It takes time and money to build the awareness and
23 trust necessary to convince consumers to buy services from a newly established brand.

1 Third, Halo operated 28 tower sites in 28 different MTAs, creating a high demand for
2 marketing investment. We needed to strike a balance between actively marketing
3 services everywhere we were, while at the same time not diluting our investment to such
4 a degree that we failed to get the return on these investments we required. I will not say
5 that we got this balance right. But that is the mode we were in at the time the attacks
6 started by the ILECs.

7 Lastly, and back to the USB, we were consciously limiting our consumer
8 marketing efforts in the late 2010/early 2011 timeframe waiting for Airspan to inform us
9 that the FCC had certified the much more desirable USB dongle. Throughout 2010 and
10 2011, we were promised that FCC certification was “just around the corner.” We
11 modulated and controlled our consumer marketing efforts based on these promises. The
12 FCC has, within the past two months, finally certified Airspan’s USB dongle. Sadly, the
13 money and management time that could now be going to marketing and sales of this
14 compelling device now that it is available is being consumed by this fight with the
15 ILECs.

16 **Q: Are your current retail customers paying for service?**

17 A: No, but the plan is for them to become paying customers, and for Halo to earn a profit.

18 **Q: Why are you not charging these customers today?**

19 A: Very simple. At the time we were investing in retail sales and marketing, we were trying
20 to build a base of customers as quickly and with as little marketing capital as possible. In
21 effect, we were using a similar, though not the same, strategy as a Facebook or Yahoo.
22 Offer a service for free to build a base, then work to convert that base to paying
23 customers, in some form or fashion, as you demonstrate the value of your service. As

1 any new service provider can attest, the lack of a brand name is a major impediment to
2 consumer adoption. You can attempt to overcome the lack of a brand identity in many
3 ways. One way is to commit large amounts of marketing capital to build your brand and
4 market your service. As a competitor of Halo's, Clearwire has clearly demonstrated most
5 recently that this is a strategy that only very deep pocketed companies can employ, and
6 even then, the results can be disappointing. Clearwire's pull back from retail marketing
7 demonstrated that billion dollar balance sheets are not adequate to play this game. Our
8 strategy simply recognizes that a monthly fee is a barrier to adoption. By making our
9 price zero, we are trying to maximize the take rate, as the consumer is generally more
10 willing to take a risk and try your product or service, while maximizing the return on our
11 relatively modest marketing budget by yielding the largest base of customers possible.

12 **Q: Does Halo provide any value or benefit to the consumers in Florida?**

13 A: AT&T has argued before other Commissions that Halo and Transcom offer no value to
14 communications customers in the states in which both companies conduct business.
15 AT&T has argued that the removal of Halo and Transcom from the marketplace would
16 not be felt by, or known to, Florida communications customers. They seem to base this
17 argument on the fact that neither Halo nor Transcom have a direct relationship with such
18 consumers. Again, I must point out the obvious flaws in this line of thinking.

19 First, since when does the lack of a direct customer relationship in the delivery of
20 a "finished" good or service matter when determining the relevance, importance, or
21 value contribution of an upstream or component supplier for that good or service?
22 Simply put, it does not matter. Do Apple iPad customers know that Broadcom supplies
23 certain chipsets? Does this lack of awareness by them change Broadcom's importance,

1 relevance, or value contribution to the iPad? I'm not suggesting that there aren't
2 alternative suppliers for the parts Broadcom supplies for the iPad. I'm simply saying that
3 if you took their chips out, the iPad isn't going to be very useful to the end customer, and
4 they don't need a direct relationship with Broadcom to derive the value or feel the loss
5 of Broadcom's contribution to the device.

6 Second, the mere fact that major providers of communications services
7 voluntarily choose to purchase Transcom's services, and incorporate them into the
8 delivery of service to their consumer customers, means Transcom provides a valuable
9 service, not only to the service providers, but by extension, to the service providers' end
10 consumers. Thus, if Transcom, and Halo as one of Transcom's service vendors, are
11 removed from the marketplace, this means that the preferred provider of service to these
12 service providers is taken away, forcing these providers to employ their "second best"
13 choice, assuming they have such a choice. If a "second best" choice exists, likely it is
14 more expensive, and/or offers lesser quality, than what Transcom and Halo, taken
15 together, previously offered.

16 Taking this to its logical conclusion, this means that the price and/or quality of
17 service Transcom's customers can deliver to their Florida consumers will move in the
18 wrong direction, or, their profit and market share will suffer. As far as I can tell, these
19 are not desirable outcomes and in the public good, as price rises or competitors to
20 incumbents are incrementally weakened. Not being able to precisely quantify these
21 effects do not make them magically disappear.

22 I will leave it to this Commission to determine the net economic impact of the
23 revenue gains and losses in this dynamic situation. But certainly this Commission

1 understands that looking only at the alleged revenue “lost” by the ILECs, without taking
2 into account the economic and market “gains” of what Halo and Transcom provide, is to
3 ignore half the picture, a very important half to a functioning competitive market, and
4 undermine the very goal of this Commission, which is to protect and serve the public
5 good.

6 **Q: How do you respond to the insinuation that Halo and its related entities have**
7 **inappropriate relationships?**

8 A: Much has been made of the fact that Halo has contracted with related companies for a
9 range of required services, including network services, NOC services, accounting and
10 regulatory services, payroll services, technical consulting services, and management
11 services. Our opponents have never argued that Halo does not require these services to
12 operate. And they have not brought forth any evidence that Halo is over paying for these
13 services, and in effect, siphoning money from Halo to these related companies. The fact
14 of the matter is Halo is paying at or below market rates for services required to operate
15 the business. This is good, smart business management. There are many aspects of
16 Halo’s operation that we are performing with in-house resources, and other services for
17 which we have contracted with third party companies. But leaving that aside, the bottom
18 line is Halo pays less than 10% of its revenue for the many services provided by these
19 affiliated entities, and the majority of this is pass-through charges and salary and benefit
20 related costs, which would certainly be higher were Halo to contract directly for these
21 services or perform them on its own.

1 When seen in this light, the assertion or inference that these related entity
2 relationships are somehow mischievous, fiscally irresponsible, or part of some “money
3 laundering” plot, wilts like a weed in the blazing sun.

4
5 **HALO’S SERVICE**

6 **Q: Is Halo’s consumer product centered on “voice” service?**

7 A: Not really. It was designed to be a wireless broadband product that also has
8 interconnected voice capability.

9 **Q: What service areas have you targeted?**

10 A: Halo has specifically targeted rural areas for its coverage areas.

11 **Q: What market is targeted by Halo’s “consumer-oriented” service offerings?**

12 A: Consumers and small business in rural towns, where their choice of broadband provider
13 and the services offered are limited, and/or where the consumers are typically forced to
14 pay higher prices. By selecting small towns underserved by incumbent operators for the
15 deployment of these base stations, Halo can leverage common infrastructure to provide
16 wireless broadband voice and data services on a scale, and at a price other operators
17 simply cannot because they must derive a return on investment from only one market,
18 where we serve two. I will point out that our detractors have claimed that Halo does not
19 serve, and has no intention of serving, “retail” wireless customers. If this were true, I can
20 tell you as an operator it would make no sense to deploy base stations in rural locations.
21 These sites are generally remote, hard to get to, and backhaul services are limited and
22 expensive, to name just a few challenges. If we had no intention of serving the people in

1 these communities, we undoubtedly increased operational complexity and increased
2 operating costs in a material way by deploying where we did.

3 **Q: Does Halo plan to sell phones and devices?**

4 A: Yes, as the device ecosystem supporting WiMAX technologies, especially in the 3650
5 band, continues to mature.

6 **Q: Has Halo finished identifying and securing sources for all of the devices it plans to
7 sell?**

8 A: Not yet.

9 **Q: Has Halo finished building out its nationwide network?**

10 A: I would say that the radio network we have in place today is adequate to operate our
11 current business. So expansion would be incremental, and primarily focused on the rural
12 consumer markets I mentioned earlier, specifically expanding the radio coverage area of
13 existing towns we serve, and launching service in new towns. We have not done either
14 as yet as the incremental capital we expected to generate from operations, and
15 managements attention, has been drained by these legal fights with the ILECs.

16 **Q: Why does Halo need a nationwide network?**

17 A: In wireless services, coverage is king. Coverage is what customers of wireless services
18 expect. The more coverage you have as an operator, the easier it is to compete, build and
19 sustain a profitable customer base, and deliver the value customers of wireless services
20 expect.

21 **Q: Does Halo provide “commercial mobile services,” “unlicensed wireless services,”
22 and/or “common carrier wireless exchange access services”?**

1 A: I am not a lawyer, but on the advice of counsel and the service definitions in §
2 332(c)(7)(C) of the Telecommunications Act, Halo takes the position that its services are
3 “licensed” under these provisions. My non-legal understanding is that Halo provides
4 commercial mobile radio services. It is also my understanding that if and when Halo
5 carries a call to or from an IXC providing “telephone toll service,” Halo would be
6 providing “common carrier wireless exchange access service,” as I believe that term is
7 used in § 332(c)(7). If one accepts the FCC’s holding that ESPs are exchange access
8 customers, then Halo is authorized to provide exchange access to ESPs. On the advice of
9 counsel, our position is that our 3650 authority is a “licensed” service. If this position
10 proves incorrect, then our understanding would be that our services would be considered
11 “unlicensed wireless services” on the basis that we offer “telecommunications services
12 using duly authorized devices which do not require individual licenses.” Regardless, we
13 still assert it is CMRS.

14 **Q: Does Halo provide “telephone toll service”?**

15 A: Again, I am not a lawyer. Our counsel has advised me that § 153(48) of the
16 Telecommunications Act defines “telephone toll service” as “telephone service between
17 stations in different exchange areas for which there is made a separate charge not
18 included in contracts with subscribers for exchange service.” I have also been advised
19 that for CMRS purposes, the MTA is the relevant “exchange.” We understood the
20 precedent to mean that all of the communications in Florida enter Halo’s network as the
21 result of an “end user’s” “wireless station” *originating* a communication with a Halo
22 base station in a specific MTA. All of these communications are delivered for
23 termination to a “station” in the same MTA as Halo’s originating end user’s wireless

1 station. But, even if there is not an “origination,” Halo still receives the communication
2 from its customer in the MTA. Thus, Halo does not transport communications between
3 MTAs for any traffic that uses interconnection. Therefore, none of the traffic in issue is
4 “between exchanges.” Based on these facts, Halo asserts that its services do not fall
5 within the definition of “telephone toll service.”

6 Halo is not acting as an IXC for the calls in issue because Halo is not providing
7 “telephone toll” as a part of any such call. None of the calls in issue fit the limited
8 circumstances under which a CMRS provider is deemed to be providing telephone toll
9 service and thus potentially subject to access charges.¹

10 11 NATURE OF HALO TRAFFIC

12 **Q: Mr. McPhee and Mr. Neinast both assert that Halo is not sending AT&T “wireless”**
13 **originated traffic, and instead is sending “wireline” originated traffic, and that this**
14 **difference results in a breach of the ICA between the parties, and a difference in**
15 **termination charges between what Halo has been paying AT&T and what AT&T**
16 **thinks it is owed. How do you respond to these assertions?**

17 **A: Mr. McPhee’s and Mr. Neinast’s assertions are founded on traditional interpretations and**
18 **applications of the terms “wireless” and “originated,” and a dismissal of Federal**
19 **decisions regarding the nature and rights of Halo’s high volume customer. From their**
20 **testimony, it is clear that to them “wireless” means “cellular,” and “originated” applies**
21 **to calls from either individual cell phone subscribers, or from individual landline phone**
22 **subscribers. Nice neat buckets. These are undoubtedly two very prominent service and**

¹ On the advice of counsel, Halo relies on: *Local Competition Order* ¶ 1043 and note 2485.

1 customer type scenarios, notwithstanding that the lines between these two are blurring
2 rapidly, a trend AT&T's own expert witnesses have recognized.

3 The AT&T witnesses have also admitted they have no real way of accurately
4 identifying whether a particular call actually "originated" from a "wireline" customer of
5 an LEC using a traditional phone. The entirety of their case is based on a review of the
6 calling number in the CPN parameter, identifying the rate center the number is
7 associated with and the type of number ("wireline" or "wireless"), and then the specific
8 company that has the individual number. They then *assume* that the call "originated" in
9 the rate center, from CPE consistent with the number "type" and on the network of the
10 company that has the number. The problem is that none of these assumptions are
11 necessarily valid.

12 **Q: So I take it you do not agree with AT&T's assertions that calling party and called**
13 **numbers are reliable ways to determine where calls actually began, and are**
14 **appropriate parameters to determine call jurisdiction for call rating purposes?**

15 **A:** No I do not. And neither does anyone else in the industry except apparently AT&T and
16 the ILECs fighting Halo. Despite AT&T's new found enthusiasm for this method,
17 AT&T, the FCC, and everyone else in the industry recognize the limitations of this
18 approach. In the face of years of industry and regulatory acceptance of the limitations of
19 numbers for call rating, it is disingenuous, and just plain silly, for AT&T to argue before
20 this Commission that numbers should now be used for this purpose. It is even more
21 ridiculous to base the arguments for their use in call rating essentially on the notion that
22 it's the only way they know how, despite the known flaws, with the implied inherent
23 error growing every day. To apply it today, arguing it's the "industry" standard, when the

1 “industry” is really only the ILECs, is a direct attempt to obtain access revenues from
2 calls where access does not apply.

3 **Q: On what basis do you draw these conclusions, and how does Halo suggest the**
4 **deficiencies in numbers based rating being addressed?**

5 A: Let’s start with the FCC’s position on numbers based rating. In its *Connect America*
6 order, the FCC says in paragraphs 934, 960, and 962 that they still believe numbers are
7 unreliable for this purpose. The ILECs have attempted to turn this position on its head by
8 saying, well, the FCC didn’t say they can’t be used. No, to my knowledge, the FCC
9 hasn’t taken such a position. But in my view, common sense suggests they don’t need to.
10 The industry knows full well that advanced communications technologies, both IP and
11 wireless, are rendering it impossible to rely on CPN to determine where a call began or
12 the network owner or type of network that was used to initiate the call. Allow me to
13 provide a few examples.

14 Carriers like T-Mobile offer services today that allow their wireless users to
15 originate calls using wireless base stations connected to wired broadband networks. Are
16 calls using these devices wireless or wireline originated? Is this “non-access” traffic or is
17 it “access reciprocal compensation”? Is it transit?

18 Verizon Wireless offers Home Phone Connect, a service that allows VZW
19 customers to port their home numbers to VZW and use traditional landline phones to
20 make calls over their wireless network. Is this a mobile wireless service? Fixed wireless?
21 Wireline? Is this non-access” traffic or is it “access reciprocal compensation”? Is it
22 transit? Would calls from a ported landline number be viewed by a terminating LEC as a

1 wireless call or a wireline call? We suspect the latter as the CPN would be a landline
2 telephone number. But these calls would all traverse the VZW wireless network.

3 VZW just introduced a wireless broadband product called “Home Fusion” that is
4 “designed for use in rural and remote homes that can’t get DSL or cable.”² “The service
5 requires the installation of a cylindrical antenna, about the size of a 5-gallon bucket, on
6 an outside wall.” “Verizon cites the same speeds for HomeFusion as for LTE data sticks:
7 5 to 12 megabits per second for downloads, and 2 to 5 megabits for uploads.” This is
8 similar in capability to Halo’s consumer broadband product, except VZW’s product is
9 quite a bit more expensive. I am sure that users can connect some form of soft phone
10 client and make interconnected VoIP calls – just like they can with Halo’s product. Does
11 AT&T intend to claim that VZW cannot use interconnection to originate or terminate
12 calls to users employing this product? Is this a mobile wireless service? Fixed wireless?
13 Wireline? Is this “non-access” traffic or is it “access reciprocal compensation”?

14 In the myopic world of the ILECs, these scenarios are fanciful, unlikely and
15 irrelevant. However, their cellular counterparts know differently. The entire
16 telecommunications industry knows differently. And most importantly, consumers know
17 differently. Voice is now, and will further become, an IP “application,” where telephone
18 numbers “move” seamlessly across devices and networks, just like music content in the
19 “cloud” can be accessed on any device, anywhere, at any time. Voice is really no
20 different.

² See “Verizon launches faster-than-wired wireless broadband for homes; starts at \$60/mo,” Washington Post Online, Taken from Associated Press, March 5, 2012, available at http://www.washingtonpost.com/national/verizon-launches-faster-than-wired-wireless-broadband-for-homes-starts-at-60mo/2012/03/06/gIQADvYvtR_story.html.

1 Because of these convergence trends, the FCC has supported, and now requires,
2 traffic factors to allocate between different traffic types precisely because of the fact that
3 numbers have been disassociated from networks and location and thus are not reliable.³

4 From Halo's perspective, we designed our business plan to operate according to
5 the rules of CMRS carriers, where traffic is originated by end users, using wireless
6 stations capable of movement, at towers located in MTAs. We are prepared to operate
7 under the FCC's new regime (for so long as it is in effect pending appellate review) but
8 we must be given a chance to bring our arrangements and operations into compliance,
9 and the full set of FCC rules must be implemented. The ILECs cannot be allowed to
10 cherry pick the rules they like, and ignore or dismiss those they don't. The idea that
11 billing for the entire industry is determined on the basis of the originating and
12 terminating telephone numbers of the called and calling parties is not true for the CMRS
13 industry, and it is quickly dissolving in the entire telecom space in the face of converged
14 wireless-wireline and IP-based services. The "practice" is for carriers to use traffic
15 factors instead of call-by-call rating, since numbers-based rating is no longer feasible in
16 today's advanced network and service environment where the starting and ending
17 "locations" of calls is hard to consistently, accurately and efficiently determine and the

³See, e.g. FCC Order ¶ 934 ("...In addition, given the recognized concerns with the use of telephone numbers and other call detail information to establish the geographic end-points of a call, we decline to mandate their use in that regard, as proposed by some commenters. ..."); ¶ 960 ("...Because telephone numbers and other call detail information do not always reliably establish the geographic end-points of a call, we do not mandate their use. ..."); ¶ 962 ("Contrary to some proposals, however, we do not require the use of particular call detail information to dispositively distinguish toll VoIP-PSTN traffic from other VoIP-PSTN traffic, given the recognized limitations of such information. For example, the Commission has recognized that telephone numbers do not always reflect the actual geographic end points of a call. Further, although our phantom traffic rules are designed to ensure the transmission of accurate information that can help enable proper billing of intercarrier compensation, standing alone, those rules do not ensure the transmission of sufficient information to determine the jurisdiction of calls in all instances. Rather, consistent with the tariffing regime for access charges discussed above, carriers today supplement call detail information as appropriate with the use of jurisdictional factors or the like when the jurisdiction of traffic cannot otherwise be determined. We find this approach appropriate here, as well.")

1 "number" consistently yields an incorrect answer. The FCC's new regime calls for
2 factors and we are willing to develop and supply them.⁴

3 The inter-carrier compensation regime is not and cannot be founded on the
4 assumption that you can definitively determine the starting point of a call, the type of
5 call, or the initial network based on "the number." I would further observe that reliance
6 on the number as the exclusive rating determinant is subject to the very outcomes the
7 LECs want to avoid: gaming and arbitrage. It was not that long ago that state
8 commissions all over the country had to resolve the inter-carrier compensation issues
9 related to "arbitrage" using Virtual NXXs. The states largely adopted the ILEC position
10 in those cases and ruled that the telephone numbers **do not** control rating. The ILECs
11 insist on using numbers when it means they can claim access, but they have refused to
12 use numbers when it meant they do not get access. The Commission cannot be so
13 arbitrary.

14 If the ILECs are using the calling party number to identify the "originating
15 network," our position is this is not a reliable way to determine the starting location of a
16 call, or the carrier network that the call started on. Consequently, it seems to me that any
17 inter-carrier compensation regime founded on the assumption that you can definitively
18 determine the starting point of a call is fundamentally flawed and subject to the very
19 outcomes the LECs want to avoid: gaming and arbitrage. The fact of the matter is,
20 wireline and wireless networks and services are converging, rapidly, and in ways that
21 blur the traditional, once clear distinctions of wireless and wireline.

⁴ I hope and trust that the PSC is also willing to implement the FCC's new rules because those rules also require the ILECs to negotiate in good faith to establish IP-based interconnection, and Halo is preparing to seek IP-based interconnection from AT&T and many of the ILECs involved.

1 For a converged IP service provider, such as Halo, the starting network or the
2 type of number used simply does not matter. And even if it did, there is no way for us to
3 definitively determine where a call started, for the same reasons as mentioned above.
4 Trying to maintain this distinction is fighting a losing battle, and swimming against the
5 strong tide of market, technical and regulatory evolution occurring in the
6 telecommunications industry.

7 Thus, AT&T is asking this Commission to assume away how the industry
8 actually operates today, how current technology can be used and is used, and most
9 important, the way that users are actually employing this technology to communicate.
10 The calling number simply cannot be used as an indicator of what is actually happening
11 today and in particular where the call started, or the network that supported call
12 initiation.

13 **Q: So do you admit that some of the communications in issue might have actually**
14 **started on other networks?**

15 **A:** Most of the calls probably did start on other networks before they came to Transcom for
16 processing.⁵ It would not surprise me if some of them started on the PSTN. Judge Hale
17 expressly discussed the PSTN-originated traffic Transcom processed and held that
18 Transcom is still both an ESP and an end user. We understand, however, that a large
19 proportion of Transcom's calls started at IP-based end-points. Halo is not in a position to
20 determine where or on what network the call started, and we have not asked our
21 customer. In any event, our contention is that this simply did not matter from a Halo
22 perspective prior to the new rules. Counsel advises me that ESPs have always received

⁵ This is why Transcom might be an "intermediate provider" under the FCC's new definition at 47 C.F.R. § 64.1600(f).

1 calls that started somewhere else. The ESP takes the call, adds its enhanced functions
2 and then – when necessary – secures termination from a carrier vendor by buying
3 telephone exchange service.⁶

4 Based on advice of counsel, our understanding and interpretation of Judges
5 Hale’s and Felsenthal’s decisions regarding whether Transcom is an ESP is that they
6 recognize that Transcom receives communications from its customers that started on
7 other networks, including from LEC networks. The courts found that Transcom then
8 processes the communication, changes the content and sometimes changes the form.
9 Transcom then secures telephone exchange service from a carrier to arrange for final
10 termination. My understanding is that the question in those cases was whether this meant
11 Transcom can buy telephone exchange service or must purchase exchange access.
12 Again, our view based on the advice of counsel is that all four decisions hold that
13 Transcom was exempt from exchange access and is an end user qualified to purchase
14 telephone exchange service. As mentioned above, under the FCC’s new rules, one of the
15 possible traffic classifications for Transcom’s traffic processed by Halo is that it is
16 “access reciprocal compensation.” However, if this is the traffic classification, since it is
17 IP, the “access” rate must be the interstate rate.

18 Halo does recognize that the actual starting point is relevant to an “end-to-end”
19 test for jurisdiction. However, based on the advice of counsel, we believe this simply
20 does not matter from a Halo perspective since the call is still subject to reciprocal

⁶ The ILECs incessantly assert that the ESP Exemption only applies “only” for calls “from” an ESP customer “to” the ESP. Counsel advises this is flatly untrue. ESPs “may use incumbent LEC facilities to originate and terminate interstate calls[.]” See NPRM, *In the Matter of Access Charge Reform*, 11 FCC Rcd 21354, 21478 (FCC 1996). The FCC itself has consistently recognized that ESPs – as end users – “originate” traffic even when they received the call from some other end-point. That is the purpose of the FCC’s finding that ESPs systems operate much like traditional “leaky PBXs.”

1 compensation, particularly under the new rules. Counsel advises that the federal courts
2 have on several occasions directly held that the “end-to-end” theory is relevant to
3 jurisdiction, but it “is not dispositive” of the inter-carrier compensation that applies. Our
4 contention, based on a careful consideration of the relevant regulations, is that the
5 “jurisdiction” of a call is a separate question from whether “reciprocal compensation” or
6 “access charges” are due on that call.⁷

7 The ILECs have pointed to certain language in paragraph 1066 of the FCC’s
8 recent rulemaking that was directed at Halo, and the FCC’s discussion of “re-
9 origination.” I already spoke to this before, but I’d like to again point out that this
10 language seems to assume that Halo is serving a carrier, not an ESP. TDS told the FCC
11 that Transcom was a carrier, and the FCC obviously assumed – while expressly not
12 ruling – that the situation was as TDS asserted. That position flies in the face of the fact
13 that the FCC expressly refused to rule on whether VoIP is a telecommunications service.
14 Transcom can only be a carrier if it is providing a telecommunications service. This is
15 one of the many imponderables in the FCC’s order. While we acknowledge that they
16 held that this traffic does not originate on Halo’s network “for purposes of the intraMTA
17 rule” that does not mean it does not “originate” from Transcom for other purposes,
18 including the provision in the ICA in issue in this case.

⁷ On the advice of counsel, Halo relies on: *Bell Atlantic*, 206 F.3d at 5-6, 8, and Order on Remand and R&O and Order and FNPRM, *High Cost Universal Service Reform, Federal-State Joint Board on Universal Service, Lifeline and Link Up, Universal Service Contribution Methodology, Numbering, Resource Optimization, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Inter-carrier Compensation Regime, Inter-carrier Compensation for ISP-Bound Traffic, IP-Enabled Services*, ¶ 22, 24 FCC Rcd 6475, 6485-86 (2008) (emphasis added):

“22. Our result today is consistent with the D.C. Circuit’s opinion in *Bell Atlantic*, which concluded that the jurisdictional nature of traffic is not dispositive of whether reciprocal compensation is owed under section 251(b)(5). It is also consistent with the D.C. Circuit’s *WorldCom* decision, in which the court rejected the Commission’s view that *section 251(g)* excluded ISP-bound traffic from the scope of *section 251(b)(5)*, but made no other findings.

1 “Transit” occurs when one carrier switches traffic *between two other carriers*.
2 Indeed, that is precisely the definition the FCC provided in paragraph 1311 of the recent
3 rulemaking.⁸ We disagree that Halo can be said to be providing “transit” when it has an
4 *end user* as the customer on side and a carrier on the other side. Any other construction
5 necessarily leads to the conclusion that the FCC has decided that the D.C. Circuit was
6 wrong in *Bell Atlantic*. But this is how the FCC characterized the traffic, and until the
7 Tenth Circuit reverses we must take the FCC’s discussion into account. Once again,
8 however, that must mean access charges cannot apply, because the FCC held in
9 paragraph 1311 that transit is “non-access” traffic.

10 Halo agrees that a call handed off from a Halo *carrier customer* would not be
11 deemed to originate on Halo’s network.⁹ But Transcom is not a carrier, it is an ESP, and
12 I will discuss in more detail below, an end user purchaser of telecommunications
13 services. ESPs always have “originated further communications,” but for compensation
14 purposes (as opposed to jurisdictional purposes), the ESP is still an end-point and a call
15 originator. Again, once one looks at this from an “end user” customer perspective, the
16 call classification result is obvious. The FCC and judicial case law is clear that an end
17 user PBX “originates” a call even if the communication initially came in to the PBX

⁸ “1311. Transit. Currently, transiting occurs when two carriers that are not directly interconnected exchange non-access traffic by routing the traffic through an intermediary carrier’s network. Thus, although transit is the functional equivalent of tandem switching and transport, today transit refers to non-access traffic, whereas tandem switching and transport apply to access traffic. As all traffic is unified under section 251(b)(5), the tandem switching and transport components of switched access charges will come to resemble transit services in the reciprocal compensation context where the terminating carrier does not own the tandem switch. In the Order, we adopt a bill-and-keep methodology for tandem switched transport in the access context and for transport in the reciprocal compensation context. The Commission has not addressed whether transit services must be provided pursuant to section 251 of the Act; however, some state commissions and courts have addressed this issue.” (emphasis added)

⁹ See § 252(d)(2)(A)(i), which imposes the “additional cost” mandate on “calls that originate on the network facilities of the other carrier.”

1 from another location on the PSTN and then goes back out and terminates on the
2 PSTN.¹⁰

3 So, Halo has an end-user customer—Transcom. Although this end user customer
4 receives calls from other places, for inter-carrier compensation purposes, we reasonably
5 believed that the calls still originate on Halo's network. That customer connects
6 wirelessly to Halo. Transcom "originates" communications "wirelessly" to Halo, and all
7 such calls are terminated within the same MTA where Transcom originated them (the
8 system is set up to make sure that all calls are "intraMTA"). This arrangement matches
9 up exactly with the requirement in the recital in the AT&T ICA that AT&T cites for its
10 claim Halo is not acting consistently with the current agreement. We relied on the D.C.
11 Circuit's holding in *Bell Atlantic* that ESP's originate traffic when this clause was being
12 negotiated. Since the FCC has now effectively said the D.C. Circuit was wrong we
13 should be allowed to obtain new terms that are consistent with the FCC's repudiation of
14 *Bell Atlantic*.

15 In summary, Halo is not saying that some calls ultimately sent to AT&T for
16 termination did not, or could not have, started on the PSTN. As I said above, we have
17 acknowledged that this could happen. What we are saying is that a) it does not matter
18 given our high volume customer's status as an ESP and end user, and b) any traffic
19 analysis based on calling and called numbers is not a reliable way to determine call

¹⁰*See, e.g., Chartways Technologies, Inc. v. AT&T*, 8 FCC Rcd 5601, 5604 (1993); *Directel Inc. v. American Tel. & Tel. Co.*, 11 F.C.C.R. 7554 (June 26, 1996); *Gerri Murphy Realty, Inc. v. AT&T*, 16 FCC Rcd 19134 (2001); *AT&T v. Intrend Ropes and Twines, Inc.*, 944 F. Supp. 701, 710 (C.D. Ill. 1996); *American Tel. & Tel. Co. v. Jiffy Lube Int'l., Inc.*, 813 F. Supp. 1164, 1165-1170 (D. Maryland 1993); *AT&T v. New York Human Resources Administration*, 833 F. Supp. 962 (S.D.N.Y. 1993); *AT&T v. Community Health Group*, 931 F. Supp. 719, 723 (S.D. Cal. 1995); *AT&T Corp. v. Fleming & Berkley*, 1997 U.S. App. LEXIS 33674 *6-*16 (9th Cir. Cal. Nov. 25, 1997).

1 jurisdiction for rating purposes, and that any method relying on numbers for rating is a
2 blatant attempt to secure access charges for calls that are not subject to such charges.

3 **Q: How do you respond to AT&T's claims that Halo is not originating wireless traffic,**
4 **Transcom is not an ESP, and instead all of Halo's traffic is "originating" landline**
5 **traffic subject to access charges?**

6 A: I am not a lawyer, and I am relying on regulatory counsel here, but my layman's
7 interpretation is that ESP status conveys four important attributes that are at the heart of
8 classifying Halo's traffic: (1) ESPs are "end users," (2) ESPs purchase telephone
9 exchange services, (3) ESP traffic is not access traffic, and (4) ESPs are end users that
10 originate and terminate traffic. In other words, since ESPs are not carriers or IXCs, their
11 traffic cannot be treated as if an IXC is involved. Further, when a company like Halo
12 provides Telephone Exchange Service to an ESP, it is not providing a "transit" service
13 since Halo is not switching calls between two carriers.¹¹

14 The ILECs say that Halo is arguing that Transcom's involvement creates a "re-
15 origination." That is a mischaracterization. Our argument is that Transcom – like all
16 ESPs – is a communications-intensive business end user that takes communications from
17 Transcom's customer, processes the communication, and then "initiates a further
18 communication." Halo did not just cook up this concept. It is taken directly from the
19 D.C. Circuit's description of ESPs and their regulatory status in the *Bell Atlantic*
20 decision, which I will explain further below.

21 AT&T's witnesses are claiming that Halo is merely "re-originating" traffic and
22 that the "true" end points are elsewhere on the PSTN, thus making the traffic subject to

¹¹ I will explain the impact of the FCC order and new rules below, by accepting the FCC's characterizations and applying them to our context. I am admittedly disagreeing with the FCC here. But the ILECs are as well; they just won't admit it.

1 access charges. In making this argument, however, AT&T is advancing the exact
2 position that the D.C. Circuit rejected in *Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir.
3 2000). On advice of counsel, in that case, the D.C. Circuit held it did not matter that a
4 call received by an ISP is instantaneously followed by the origination of a “further
5 communication” that will then “continue to the ultimate destination” elsewhere. The
6 Court held that “the mere fact that the ISP originates further telecommunications does
7 not imply that the original telecommunication does not ‘terminate’ at the ISP.” In other
8 words, the D.C. Circuit clearly recognizes – and functionally held – that an ESP is an
9 “origination” and “termination” endpoint for inter-carrier compensation purposes (as
10 opposed to *jurisdictional* purposes, which does use the “end-to-end” test).

11 The traffic at issue here that is ultimately being terminated by AT&T first is
12 received by Transcom where there is a “termination.” Transcom then “originates” a
13 “further communication” in the MTA on the Halo wireless network. In the same way
14 that ISP-bound traffic *from* the PSTN is immune from access charges (because it is not
15 “carved out by section 251(g) and is covered by section 251(b)(5)), the call *to* the PSTN
16 was also immune under the rules as they existed prior to December 29, 2011.¹²
17 Enhanced services were defined long before there was a public Internet. ESPs do far
18 more than just hook up “modems” and receive calls. They provide a wide set of services
19 and many of them involve calls to the PSTN.¹³ The FCC observed in the first decision

¹² The ILECs incessantly assert that the ESP Exemption only applies “only” for calls “from” an ESP customer “to” the ESP. This is flatly untrue. ESPs “may use incumbent LEC facilities to originate and terminate interstate calls[.]” See NPRM, *In the Matter of Access Charge Reform*, 11 FCC Rcd 21354, 21478 (FCC 1996). The FCC itself has consistently recognized that ESPs – as end users – “originate” traffic even when they received the call from some other end-point. That is the purpose of the FCC’s finding that ESPs systems operate much like traditional “leaky PBXs.”

¹³ See, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, *In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing Usage of the Public Switched Network by Information Service and Internet Access Providers*, CC Docket

1 that created what is now known as the “ESP Exemption” that ESP use of the PSTN
2 resembles that of the “leaky PBXs” that existed then and continue to exist today, albeit
3 using much different technology. Even though the call started somewhere else, as a
4 matter of law a Leaky PBX is still deemed to “originate” the call that then terminates on
5 the PSTN.¹⁴ As noted, the FCC has expressly recognized the bidirectional nature of ESP
6 traffic, when it observed that ESPs “may use incumbent LEC facilities to originate and
7 terminate interstate calls.” Halo’s and Transcom’s position is simply the direct product
8 of Congress’ choice to codify the ESP Exemption, and neither the FCC nor state
9 commissions may overrule the statute.

10 The FCC recently amended its intercarrier compensation rules on a prospective
11 basis. They brought all traffic back into § 251(b)(5), which means that there is no longer
12 any traffic “carved out” by § 251(g). Then the FCC adopted special treatment for VoIP
13 traffic. If a call “originates from and/or terminates to an end-user customer of a service
14 that requires Internet protocol compatible customer premises equipment” and if the call
15 traverses interconnection with an LEC using “TDM format” for termination, then the
16 call will be rated as either “non-toll” (with traditional reciprocal compensation being
17 applied because it is “non-access”) or it is “access reciprocal compensation” and the
18 terminating LEC’s interstate access rate is applied, regardless of whether the call is

Nos. 96-262, 96-263, 94-1, 91-213, FCC 96-488, 11 FCC Rcd 21354, 21478, ¶ 284, n. 378 (rel. Dec. 24, 1996); Order, *Amendments of Part 69 of the Commission’s Rules Relating to Enhanced Service Providers*, CC Docket No. 87-215, FCC 88-151, 3 FCC Rcd 2631, 2632-2633. ¶13 (rel. April 27 1988); Memorandum Opinion and Order, *MTS and WATS Market Structure*, Docket No. 78-72, FCC 83-356, ¶¶ 78, 83, 97 FCC 2d 682, 711-22 (rel. Aug. 22, 1983).

¹⁴See, Memorandum Opinion and Order, *MTS and WATS Market Structure*, Docket No. 78-72, FCC 83-356, ¶¶ 78, 83, 97 FCC 2d 682, 711-22 (rel. Aug. 22, 1983) [discussing “leaky PBX and ESP resemblance”]; Second Supplemental NOI and PRM, *In the Matter of MTS and WATS Market Structure*, FCC 80-198, CC Docket No. 78-72, ¶ 63, 77 F.C.C.2d 224; 1980 FCC LEXIS 181 (rel. Apr. 1980) [discussing “leaky PBX”].

1 technically “intrastate” (however that is determined). As a consequence, according to the
2 FCC, the “ESP Exemption” is no longer relevant when VoIP is involved – although the
3 ESP Exemption still applies to ESP traffic that does not ““originate[] from and/or
4 terminate[] to an end-user customer of a service that requires Internet protocol
5 compatible customer premises equipment.” See FCC order ¶ 945 and note 1905. Further,
6 the FCC held in paragraph 957 (wrongly, we believe, but that is for the Tenth Circuit to
7 decide) that ESPs are and always have been “Exchange Access” customers rather than
8 “Telephone Exchange Service” customers. What this means in the Halo-Transcom
9 context is that Halo is providing “exchange access” to Transcom rather than the
10 telephone exchange service we believed it was based on precedent. But this
11 characterization does not mean Halo cannot provide this service. CMRS has always had
12 authorization to provide exchange access service as well as telephone exchange service.
13 Nor does it materially impact the compensation result under the new rules since all
14 traffic – including exchange access – has now been brought into § 251(b)(5) and is now
15 “reciprocal compensation.”

16 The FCC’s rule changes have an enormous impact on the issues in this case, at
17 least for traffic on and after December 29, 2011. For traffic before that date one must
18 apply the old rules, and for traffic after that date one must apply the new rules. Further,
19 although Halo disagrees with many of the things the FCC did and said – and has
20 appealed the order to the Tenth Circuit – for so long as it is in effect the FCC’s order
21 clarifies many aspects of the issues in this case.

22 For example, Halo’s regulatory counsel has advised me that the FCC apparently
23 disagrees with the D.C. Circuit’s holding that ESPs constitute an end point for reciprocal

1 compensation purposes, and when an ESP “originates a further communication” it is a
2 separate communication. Counsel has also advised that it appears the FCC has also –
3 apparently without discussion – decided that it now disagrees with its prior holdings that
4 end user CPE like a PBX “originates” a second leg when a call comes in to the PBX and
5 the PBX then uses its “leaky PBX” capability to seize a local line to complete the
6 communication to another end point on the PSTN. Halo relied on all of this precedent in
7 formulating its business plan for high volume service, and I do not believe we should be
8 faulted or penalized for doing so.

9 We have analyzed the FCC order, however, and each of its subsequent
10 clarifications and reconsiderations to determine how to characterize our service and the
11 intercarrier compensation implications. Suffice it to say that the ILECs’ position is just
12 as wrong post FCC order as it was pre FCC order.

13 **Q: Please explain.**

14 **A:** First, I have to reiterate a few seminal facts. All of the equipment used by Transcom and
15 Halo is IP-based. With the exception of the SIP-to-TDM conversion done to comply
16 with AT&T’s and the ILECs’ insistence on originating and terminating traffic in TDM
17 format, our network is IP. The Transcom CPE (the mobile station) is IP. So if you look
18 at the service configuration and still accept that Transcom is an end user, then we
19 contend that the traffic is subject to the FCC’s new special VoIP rules, and is all still
20 “non-access.” The only question is what sub-category of “non-access” it falls into: bill
21 and keep, intraMTA, transit, or non-intraMTA non-access, with the price determined by
22 the state according to the FCC’s pricing rules.

1 Alternatively, if you (inappropriately, in our view) look “through” Transcom to
2 see how a call started, a high percentage of Transcom’s traffic still originated using IP-
3 based CPE. Thus, it too is subject to the FCC’s new special VoIP rules. When you look
4 at it this way, then Transcom is an “intermediate provider” and Halo is Transcom’s
5 “wholesale carrier partner.” In that case, any traffic found to be “toll” because it does not
6 originate and terminate in the local area (either the MTA or the legacy local calling areas
7 set by this Commission) would be priced at the interstate access rate that applies to VoIP
8 “access reciprocal compensation.”

9 **Q: If you look at Transcom as an “intermediate provider” is Halo’s service still**
10 **“CMRS” and can Halo still support the service using its § 252 interconnection**
11 **arrangement with AT&T?**

12 **A:** We believe so, although the intraMTA rule may or may not apply. We contend that it
13 does for purposes of determining whether a call is “toll” or “non-toll” and therefore
14 “non-access” or “access reciprocal compensation,” but the FCC appears to have rejected
15 this argument based on the premises set out in its order. We believe those premises –
16 which appear to have been based on presentations by TDS Telecommunications
17 Corporation (“TDS”) and others, and in fact used the same “numbers-based
18 assumptions” they use here – are incorrect. We believe that the FCC’s order is actually
19 inconsistent. The FCC expressly says that numbers are not reliable indicators of the
20 jurisdiction of a call. *See e.g.* ¶¶ 960¹⁵ and 962.¹⁶ Yet – perhaps without realizing it –

¹⁵“Because telephone numbers and other call detail information do not always reliably establish the geographic end-points of a call ...”

¹⁶“Contrary to some proposals, however, we do not require the use of particular call detail information to dispositively distinguish toll VoIP-PSTN traffic from other VoIP-PSTN traffic, given the recognized limitations of such information.1981 For example, the Commission has recognized that telephone numbers do not always reflect the actual geographic end points of a call. Further, although our phantom traffic rules are designed to ensure the

1 they used TDS' "numbers-based" analysis to form a conclusion on where calls originate
2 in Halo's particular situation.

3 The FCC held in paragraph 972 that "we make clear that a carrier that otherwise has a
4 section 251(c)(2) interconnection arrangement with an incumbent LEC is free to deliver
5 toll VoIP-PSTN traffic through that arrangement," so we believe that Halo can still
6 support this traffic. The only question is how the traffic is treated for intercarrier
7 compensation purposes. We believe there are several different possibilities:

- 8 - a call can be "non-toll" and therefore "non-access."
- 9
- 10 - a call can be "local" under "wireline" rules or under the MTA rule, and therefore
11 "non-access."
12
- 13 - a call can be "transit" (which is how the FCC actually characterized Halo's
14 traffic) and therefore "non-access" (since the FCC also defined "transit" as "non-
15 access" in paragraph 1311.
16
- 17 - a call can be "access reciprocal compensation" because it is not "non-toll" and
18 not "transit" but since it is all "IP" it is subject to only interstate access rates.
19
- 20 - a call can be treated as "jointly provided access" as between Halo and all of the
21 LECs involved in termination. CMRS has always been able to provide exchange
22 access¹⁷ and therefore can be a joint provider of access along with the ILECs. If
23 ESPs are exchange access customers like the FCC has now said, then Transcom's
24 traffic may fall into this category. Since this is all IP-based traffic, then the
25 "access" all the carriers involved are jointly providing would be priced and billed
26 at the interstate rate.

transmission of accurate information that can help enable proper billing of intercarrier compensation, standing alone, those rules do not ensure the transmission of sufficient information to determine the jurisdiction of calls in all instances. Rather, consistent with the tariffing regime for access charges discussed above, carriers today supplement call detail information as appropriate with the use of jurisdictional factors or the like when the jurisdiction of traffic cannot otherwise be determined. We find this approach appropriate here, as well."

¹⁷ Section 47 U.S.C. § 332(c)(7)(7)(C)(i) expressly authorizes wireless providers to offer exchange access by defining "personal wireless service" as including "wireless exchange access services."). 47 C.F.R. § 20.15(c) recognizes that CMRS carriers provide exchange access, but it is mandatorily detariffed. *See also* Declaratory Ruling, *In the Matter of Petitions of Sprint PCS and AT&T Corp. For Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, FCC 02-203, ¶¶ 7-15 (rel. Jul. 2002) ("*CMRS Access Charge Declaratory Ruling*"); Notice of Proposed Rulemaking, *Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, 9 FCC Rcd 5408, 5447 (1994) ("*CMRS Equal Access NPRM*"); *see also* Declaratory Ruling, *The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Report No. CL-379, 2 FCC Rcd 2910, 2915 (1987) ("*Cellular Interconnection Order*").

1 The one result we believe is clearly not allowed under the new rules is imposition of
2 intrastate access charges on either Halo or Transcom.

3 **Q. Let's talk more about the relationship between Transcom and Halo, and**
4 **Transcom's status as an ESP. First, what is Halo's relationship with Transcom?**

5 A. One of customer and vendor, with each party serving in both roles, but for different
6 services. As a vendor to Transcom (Transcom as customer to Halo), Halo provides
7 certain telecommunications services to Transcom, with Halo serving as a provider of
8 common carrier CMRS services. Transcom purchases these CMRS services – which we
9 call “high volume” services – in the form of a “wireless telephone exchange service”¹⁸
10 or alternatively as a wireless exchange access service. As a customer of Transcom, Halo
11 purchases certain core IP services, such as soft-switch capacity, media gateway ports,
12 and IP bandwidth.

13 It is true that Halo and Transcom share certain management staff, and there is
14 some common ownership. We have never denied this. But there is also non overlapping
15 management and ownership. The two companies do not have common boards. The
16 companies operate at arms length with well documented contractual agreements between
17 them. And as of April of 2011, they are located in different offices. Again, Halo's
18 opposition continues to assert that Halo and Transcom are effectively “one company,”
19 largely on the basis of some common ownership and shared management, and the fact

¹⁸ I am advised that “telephone exchange service” is defined in Communications Act § 153(47):

(47) TELEPHONE EXCHANGE SERVICE.--The term “telephone exchange service” means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

1 that Transcom currently represents 100% of Halo's revenue. But the former is neither
2 unusual nor improper, and the latter is a temporary situation, that was brought about
3 primarily by the actions of the LECs themselves. Halo is frozen in time to its start up
4 period because of litigation. To evaluate the company, discern its strategy and intentions,
5 and furthermore to attempt to impugn its management, on this basis is flawed,
6 inappropriate, and unfair.

7 **Q. Are you familiar with the court decisions rendered by Judges Hale and Felsenthal**
8 **regarding Transcom's status as an ESP?**

9 A. I have reviewed them and mentioned them briefly in my testimony above.

10 **Q. What do you understand are the implications and ramifications of these decisions**
11 **on Halo and Transcom with respect to the service Halo sells to Transcom?**

12 A. Based on advice of counsel, my understanding of these decisions is that they establish
13 Transcom as an ESP, and that as such, Transcom is to Halo, an "end user" purchaser of
14 Halo's common carrier telecommunication services. Furthermore, my understanding
15 from these decisions and counsel is that when ESPs purchase services from a common
16 carrier like Halo, access charges are not due on their traffic. The bankruptcy court – like
17 many other federal courts found that ESPs purchase "telephone exchange service."

18 Going into further detail on this, it is our understanding that Transcom's
19 operations have been reviewed by a federal court with jurisdiction to determine if
20 Transcom is an ESP, and that on several occasions these courts affirmed that Transcom
21 is indeed an ESP. Specifically, in *In re Transcom Enhanced Services, LLC* (the "Hale
22 Opinion"), (which is attached as Exhibit 1 to the Pre-Filed Testimony of Robert Johnson
23 in this matter), the court held that Transcom does not provide telecommunications, and is

1 an ESP. The Hale Opinion concluded that “a service that routinely changes either the
2 form or the content of the transmission would fall outside of the definition of
3 ‘telecommunications’ and therefore would not constitute a ‘telecommunications
4 service.” See Johnson, Exhibit 1, pg. 6. On the basis that Transcom’s operations
5 necessarily result in a change in content and often a net change in form, the Hale
6 Opinion concluded that Transcom is an ESP. The Hale Opinion further posited that
7 Transcom has never held itself out as a common carrier and there is no legal compulsion
8 that Transcom operate or hold out as a common carrier.

9 Our understanding of the Hale Opinion is that AT&T and SBC contended that
10 Transcom’s service was similar to the service addressed by the FCC in the “IP-in-the-
11 Middle” decision. However, our understanding of the Hale Opinion is that it rejected that
12 argument and held that the service provided by Transcom is “distinguishable from
13 AT&T’s specific service in a number of material ways,” and it goes on to list some of
14 the distinctions.

15 Our understanding is that the Hale Opinion went on to hold that Transcom’s
16 service “fits squarely within the definitions of ‘enhanced service’ and ‘information
17 service’ . . . and falls outside of the definition of ‘telecommunications service’ because
18 [Transcom’s] system routinely makes non-trivial changes to user-supplied information
19 (content) during the entirety of every communication.” Our understanding of the Hale
20 Opinion is that it further held that Transcom’s service “is not a ‘telecommunications
21 service’ subject to access charges, but rather is an information service and an enhanced
22 service that must pay end user charges.”

1 I have been advised by counsel that the Hale Opinion was later vacated on
2 grounds of mootness, but Judge Hale entered similar findings and rulings in the final
3 Confirmation Order of Transcom's bankruptcy proceedings (which is attached as Exhibit
4 2 to the Pre-Filed Testimony of Robert Johnson in this matter). See Johnson, Exhibit 2,
5 paragraph 4. Also, we understand that Judge Hale entered summary judgment in
6 Transcom's favor in an adversary proceeding, and that summary judgment reiterated all
7 of the findings made in the Hale Opinion (which is attached as Exhibit 3 to the Pre-Filed
8 Testimony of Robert Johnson in this matter). In addition, we understand that Transcom
9 started its operations by purchasing the assets of a company called DataVon out of
10 DataVon's bankruptcy, and the bankruptcy judge in that matter, Judge Felsenthal, made
11 similar findings about the service provided by DataVon that Transcom was purchasing
12 (which is attached as Exhibit 4 to the Pre-Filed Testimony of Robert Johnson in this
13 matter).

14 **Q. Has Transcom made any representations to Halo regarding its status as an ESP**
15 **and treatment as an "end user" based on these decisions?**

16 A. Transcom has represented to Halo that since the issuance of the Hale and Felsenthal
17 decisions, there has been no change in any of the relevant facts regarding its operations
18 or services, which were determined to constitute enhanced/information services in those
19 decisions. Transcom has further represented to Halo that its current business operations
20 depend on these decisions confirming its status as an ESP and treatment as an "end user"
21 under applicable FCC rules.

22 **Q: Does Halo rely on Transcom's representations that it is an ESP and is treated as an**
23 **"end user"?**

1 A: Transcom has supplied Halo's counsel with four separate federal court opinions directly
 2 holding that it is an ESP.¹⁹ Based on the advice of counsel, Halo relies on Transcom's
 3 representations and the decisions of Judges Hale and Felsenthal. Halo's counsel's
 4 interpretation of these decisions is that Transcom is not an IXC and is instead an "end
 5 user." Halo's counsel's interpretation is that these decisions established that Transcom is
 6 not subject to "exchange access,"²⁰ but is instead allowed to buy "telephone exchange
 7 service."²¹ Counsel has advised me that under the FCC's rules, as well as the federal
 8 statute, only IXCs must buy "exchange access" and if the customer is an "end user" then
 9 the applicable service definition is "telephone exchange service."

10 From a Halo perspective, and in reliance on the Hale and Felsenthal decisions,
 11 and the advice of Halo counsel, we believe that we are providing "telephone exchange
 12 service" to an "end user" that is entirely within an "exchange" (here the MTA) insofar as
 13 interconnection is involved. We also believe that the end user customer (Transcom)

¹⁹ I will use "ESP" as a short-hand reference, since that is the terminology used in the four decisions. My understanding is that the statutory definition is "information service" provider and the reference to an "ISP" is largely synonymous with "ESP." The FCC has not always been consistent in its terminology, however. Sometimes it uses "ESP" in the broadest sense and "ISP" to refer to the most familiar ESP subset of "Internet Service Providers." See Declaratory Ruling, CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, note 2, 14 FCC Rcd 3689, 3690 (FCC 1999), *rev'd Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000). ("For purposes of this Declaratory Ruling, we refer to providers of enhanced services and providers of information services as ESPs, a category which includes Internet service providers, which we refer to here as ISPs"). Other times it uses "ISP" in the global sense of all "information service providers" and therefore largely synonymous with "ESP." First Report and Order, *In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing End User Common Line Charges*, CC Docket Nos. 91-213, 94-1, 95-72, 96-262, FCC 97-158, ¶ 50, 12 FCC Rcd 15982, 16003 (rel. May 1997) ("50. Finally, we adopt in this Order our earlier tentative conclusion that incumbent LECs may not assess interstate access charges on information service providers (ISPs).") I am using "ESP" in the most global sense.

²⁰ See Communications Act § 153(16):

EXCHANGE ACCESS.--The term "exchange access" means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

²¹ The FCC has now apparently said all of the federal courts decisions that ESPs procure telephone exchange service were wrong. We cannot be faulted for relying on those decisions. All we can do now is implement the new FCC interpretation going forward pending the appeals that have been taken to the Tenth Circuit.

1 purchasing telephone exchange service in the form of Halo's high volume service is an
2 ESP. Halo's counsel has advised me that the courts have recognized that an ESP is
3 "simply a communications-intensive business end user" even though the ESP may
4 receive calls that started on other networks. Counsel has also advised that the ESP status
5 is preserved when "upon receiving a call" the ESP proceeds to "originate further
6 communications."²²

7 Halo is relying on these four opinions, and I believe this reliance is reasonable.
8 We do not think those decisions are wrong – to the contrary we agree with them. But it
9 does not seem fair to me to condemn either Halo or Transcom for relying on decisions
10 by two federal judges even if a state commission may later decide to overrule these
11 courts. I certainly do not think it would be reasonable or fair to infer or find some kind of
12 fraudulent or illicit activity. Neither Halo nor Transcom should be made to suffer any
13 penalty or condemnation as a consequence of relying on four court decisions that are
14 directly on point and specifically involved Transcom. Nor should either party suffer for
15 relying on clear precedent by both the FCC and the D.C. Circuit when the business plan
16 was devised. The FCC now seems to think its prior decisions were wrong, the D.C.
17 Circuit was wrong about ESP's originating traffic and several federal courts were wrong
18 about ESPs being telephone exchange service customers rather than exchange access
19 customers, but we should not be criticized, penalized and eviscerated for believing what
20 the courts and FCC said and held. Regardless, we now have new rules, and so this
21 arrangement must be considered in light of them. If the ILECs like the FCC order so
22 much then they should be held to the FCC's characterization of our traffic as "transit"

²² On the advice of counsel, Halo relies on: *Bell Atl. Tel. Cos. v. FCC*, 206 F.3d 1, 5-9 (D.C. Cir, 2000).

1 and therefore “non-access.” Halo should be allowed to seek amendments to the AT&T
2 ICA (or obtain a replacement) given the changes of law that occurred on December 29,
3 2011, and bring the terms in the ICA within the new rules. As to the other ILECs, the
4 FCC’s new default rules will apply until Halo and the ILECs enter into ICAs.

5 **Q: Is Transcom licensed by the FCC?**

6 A: Not to my knowledge. I have been advised by counsel that judicial precedents have
7 established Transcom as an ESP, and with all ESPs, there is no written “authorization”
8 required to provide such services. It is my understanding that the FCC does not “license”
9 ESPs. Instead, counsel has advised me that the FCC “authorized” ESPs to freely enter
10 and exit the market. Counsel has also advised me that the FCC prohibited states from
11 regulating or supervising ESPs under common carrier or any other economic regulation,
12 except to the extent the ESP is *also* a **carrier** and its ESP activities are **wholly**
13 intrastate.²³ The FCC has very carefully avoided deciding whether VoIP is a
14 telecommunications service or an information service, and it once again refused to
15 decide the question for historical purposes in its recent order. The FCC appears to
16 believe the question is irrelevant going forward with regard to VoIP given its decision to
17 bring all traffic within § 251(b)(5). I note that the FCC did, however, expressly state that
18 it is maintaining the “ESP Exemption” for all traffic other than VoIP in note 1905.

19 **Q: Can you explain further how Transcom is also an “end user” of Halo’s CMRS**
20 **services?**

²³ On the advice of counsel, Halo relies on: *California v. FCC*, 905 F.2d 1217, 1239 (9th Cir. 1990) (affirming FCC preemption of state regulation over non-carrier ESPs); *California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), *cert. denied*, 514 U.S. 1050 (1995) (affirming FCC preemption of state regulations relating to common carriers’ ESP activities unless they are “purely” intrastate).

1 A: As I said above, our interpretation of Transcom's ESP status is that this establishes
2 Transcom as an "end user," and not a carrier. Halo's "high volume" customer whose
3 traffic is at issue is Transcom. I have been advised by counsel that Transcom and AT&T
4 were directly involved in litigation, and the court twice held – over AT&T's strong
5 opposition – that Transcom is an ESP and end user, is not a carrier, and access charges
6 do not apply to Transcom's traffic. My understanding is that this specific set of rulings
7 was incorporated into the Confirmation Order in Transcom's bankruptcy case. I further
8 understand that AT&T was a party and is bound by these holdings. Thus, AT&T is
9 barred from raising any claim that Transcom is anything other than an ESP and end user
10 qualified to purchase telephone exchange service from carriers, and cannot now
11 collaterally attack the bankruptcy court rulings.

12 We still maintain that Halo has an end user customer (Transcom) that is using
13 wireless equipment in the MTA to originate calls. When the call starts somewhere else
14 before it gets to Transcom, Transcom adds its enhanced functions and then originates a
15 communication (or, in the words of the D.C. Circuit in *Bell Atlantic* "originates a further
16 communication") to Halo through its end user wireless station. The communication is
17 initiated using Transcom's wireless CPE, which is connected using our 3650 spectrum to
18 Halo's "wireless transmitting and receiving facilities." Transcom is indeed originating
19 the call. Counsel advises that notwithstanding the FCC's recent holding that overturns all
20 prior precedent on this question this was a straightforward application of the
21 "contamination" doctrine.²⁴

²⁴ Counsel advises that the "contamination doctrine" is explained in Memorandum Opinion and Order, *In The Matter Of Independent Data Communications Manufacturers Association, Inc., Petition for Declaratory Ruling That AT&T's InterSpan Frame Relay Service Is a Basic Service*; DA 95-2190, ¶¶ 17-18, 10 FCC Rcd. 13,717 ¶ 17-18 (October 18, 1995), citing to Memorandum Opinion and Order, *Petitions for Waiver of Section 64.702 of the*

1 Once it is clear that, under our reasonable reading of the precedent, Transcom is
2 Halo's telephone exchange service end user customer, then all of the ILECs' contentions
3 relating to the situation before the FCC's new rules simply fail. End users originate calls.
4 The calls at issue are "end user" calls, so AT&T's assertions are flatly incorrect and the
5 claim is based on the premise that Halo's customers are not "end users" purchasing
6 telephone exchange service in the MTA and do not originate calls, contrary to federal
7 court holdings like *Bell Atlantic* and the FCC's own precedent addressing leaky PBXs
8 and comparing ESPs service arrangement under the ESP Exemption to a "leaky PBX."

9 We acknowledge that the FCC seems to have reversed course from prior
10 precedent and apparently now believes ESPs are exchange access customers and do not
11 originate calls. I note that this still does not resolve the "end user" question: merely
12 because ESPs now use exchange access does not mean they are common carriers or
13 provide telecommunications service. The FCC has chosen to not expressly clarify the
14 law on this interesting issue, but it did not change the definition of "end user," which
15 basically says if an entity is not a carrier then it is an end user for access purposes.

16 But under the FCC's new rules, "origination" is only relevant to whether a
17 CMRS provider's traffic is "intraMTA" and therefore bill and keep. CMRS can provide
18 and support other traffic types. The task at hand is identifying what the Halo traffic is
19 under the new rules and then determining the appropriate compensation result.

20 Halo and Transcom are related companies. But Halo must still operate under the
21 rules applicable to common carriers. We cannot interfere with or discriminate based on
22 what our end user customer is doing on its side before our end user customer *originates*

Commission's Rules and Regulations to Provide Certain Types of Protocol conversion Within Their Basic Network, FCC 84-561 (Nov. 28, 1984) and Phase II, Report and Order, Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 2 FCC Rcd 3072, 3080 (1987).

1 (further or otherwise) an end user call in an MTA.²⁵ We believe all that matters is
2 whether our traffic comes to us from an end user employing a CMRS-based wireless
3 facility in the same MTA.

4 **Q: If we assume that Judges Hale and Felsenthal were correct, and if all of the traffic**
5 **that traverses interconnection is originated by an end user in the MTA, what is**
6 **your understanding of the “intercarrier compensation” for the end-user originated**
7 **calls from Halo that the telephone companies terminate?**

8 A: My understanding is that the calls are “non-access” for purposes of the FCC’s new rules
9 even if they are not “intraMTA.” To the extent they are not “non-access” they are
10 “access reciprocal compensation.” In that case we believe the interstate rates must be
11 applied. We continue to assert that Transcom was “exempt” from access charges under
12 the old rules like Judges Hale and Felsenthal held. Since Transcom connects to Halo
13 using IP-based equipment, then the traffic is either “non-access” or “access reciprocal
14 compensation,” but only subject to interstate prices under the new rules.

15 **Q: Are traffic factors in use between Halo and AT&T today?**

16 A: Yes.

17 **Q: When were those traffic factors negotiated and adopted by the parties?**

18 A: The traffic factors in use today with AT&T were negotiated and agreed to between the
19 parties *after* the adoption of the ICA. Indeed, the factors adopted in the ICA were, in
20 many instances, overridden and reduced. I am attaching the relevant post-ICA approval
21 correspondence where this agreement was reached as Exhibit RW-2. It is important to
22 note that, even though AT&T negotiated new traffic factors with Halo in mid-2010,

²⁵ An ILEC that is selling a private line to the end user customer might have reason to inquire whether the user is employing a “leaky PBX” in order to determine if the “leaky PBX surcharge” applies, but we are not a LEC.

1 AT&T has not attempted to negotiate new traffic factors and AT&T has not changed its
2 billing based on any new factors that they believe should apply since mid-2010.
3

4 **SIGNALING ISSUES**

5 **Q: How do you respond to AT&T's assertions that Halo is disguising call detail**
6 **records in order to make it appear that Halo's traffic is local and wireless**
7 **originated?**

8 A: I believe they are referring to Halo's practice, stopped on December 29, 2011, whereby
9 we populated Transcom's Billing Telephone Number ("BTN") in the SS7 Charge
10 Number ("CN") address signal. My response is that Halo followed industry and
11 regulatory standards. We passed CPN information delivered to us unaltered in any way.
12 We populated the CN address signal with the BTN of our end user customer in the MTA
13 when the CPN information is different from the Charge Number information. This was
14 done to denote the "chargeable number" for the call. There was no attempt to "disguise"
15 anything.

16 So AT&T's assertions that Halo "disguised" call detail records with an intent to
17 deceive is patently absurd, and the main evidence behind my assertion that these
18 companies are executing a deliberate smear campaign intended to cast Halo in a
19 questionable light. AT&T's witnesses assert that "inaccurate" call detail records were
20 sent that "disguised" the true nature of the traffic, and that the "inaccurate" call detail
21 records were sent with the sole intent of deceiving these companies. But none of their
22 witnesses ever tells us what the "inaccurate" information was, how such information
23 could deceive them, or any evidence that any of them were deceived by our alleged

1 “scheme.” They cannot provide such evidence because there were no tactics used by
2 Halo in its call signaling practices to deceive them, and at no time were they actually
3 deceived by anything Halo did or did not do with call detail records or signaling
4 information. If anything, they were “deceived” by their own adherence to tradition and
5 “old school” thinking, and were shocked and surprised when these traditions did not
6 work in the new world we live in today.

7 Halo did not alter Calling Party or Called Party information. These are the
8 common ways to manipulate call records to deceive carriers, because these are the data
9 points that LECs want to use to determine jurisdiction for rating purposes. Halo inserted
10 a Charge Number to designate the responsible billing party, consistent with industry
11 practice. The insertion of CN did not disguise, and does not disguise, the traffic in any
12 way. The insertion of CN did not trick AT&T’s system into thinking a call was local, if
13 for no other reason than AT&T does not do “call by call” rating, as Mr. Neinast himself
14 acknowledges, and as Halo understood before traffic ever started to flow. AT&T relies
15 on traffic factors to assess termination charges. Inserting a CN, or removing it, whether
16 that number is a wireless number, or a wireline number, has zero effect on call charges.
17 So, in short, inserting CN was not an attempt to disguise traffic, it does not make traffic
18 “appear” local, or it does not make it “appear” wireless. If these were Halo’s goals, why
19 would we implement a tactic that could not work and would not withstand even basic
20 scrutiny upon examination? And if insertion of CN was meant to deceive AT&T, or any
21 other ILEC, why would Halo initiate a traffic study to eliminate the InterMTA traffic
22 factors knowing full well that AT&T would examine call records as part of this process

1 and "discover" the "deception"? Halo can be accused of being bold and aggressive. But
2 bumbling idiots we are not.

3 The insertion of the CN was done, again consistent with industry practice, so
4 Halo could correctly bill services, and associate its customer calls to terminating LECs,
5 where different terminating charges are in effect. The high volume product by design
6 simply passes termination charges through to the customer. That, of course, makes the
7 high volume customer the "financially responsible party." Charge Numbers exists
8 precisely so that a carrier can signal the number associated with the "financially
9 responsible party" when the CPN does not signify the "financially responsible party."
10 Beyond these overarching "common sense" arguments, allow me to go into a little more
11 detail on some finer points on this topic.

12 AT&T's contentions fail once it is understood that we reasonably believed based
13 on express FCC and D.C. Circuit precedent that this is end user telephone exchange
14 service originating traffic, and the service being provided is functionally equivalent to an
15 integrated services digital network ("ISDN") primary rate interface ("PRI") (hereinafter
16 referred to as "ISDN PRI") trunk to a large communications intensive business
17 customer. Indeed, Halo's signaling practices with regard to CN are exactly the same as
18 those AT&T uses when it provides ISDN PRI trunk service to a business customer.

19 The ICA in issue does not rate traffic based on telephone numbers, but if and to
20 the extent AT&T's systems nonetheless (and in violation of the ICA) used the calling
21 and called numbers to rate, bill, or validate, Halo's practice resulted in proper rating and
22 billing under our theory, which, again was reasonably based on decisions by the FCC
23 and the courts.

1 Halo performs the “Class 5” functions and populates the CPN and CN
2 parameters with the address signal information that should appear in each location. And
3 again, Halo’s practices with regard to the CN are exactly the same as AT&T’s when it
4 serves a business end user with an ISDN PBX.

5 Halo does not change the content or in any way “manipulate” the address signal
6 information that is ultimately populated in the SS7 ISUP IAM CPN parameter. Halo
7 populated the CN parameter with the Billing Telephone Number of its end user
8 customer, Transcom. The ILECs allege improper modification of signaling information
9 related to the CN parameter, but the basis of this claim once again results from the
10 assertion that Transcom is a carrier rather than an end user and runs counter to the ESP
11 Rulings discussed above.

12 Halo’s network is IP-based, and the network communicates internally and with
13 customers using a combination of WiMAX and SIP. To interoperate with the SS7 world,
14 Halo must conduct a protocol conversion from IP to SS7 and then transmit call control
15 information using SS7 methods. AT&T’s allegations fail to appreciate this fact, and are
16 otherwise technically incoherent. They reflect a distinct misunderstanding of technology,
17 SS7, the current market, and most important, a purposeful refusal to consider this issue
18 through the lens of CMRS telephone exchange service provided to an end user.

19 From a technical perspective, “industry standard” in the United States for SS7
20 ISUP is American National Standards Institute (“ANSI”) T1.113, which sets out the
21 semantics and syntax for SS7-based CPN and CN parameters. The “global” standard is
22 contained in ITU-T series Q.760-Q.769. ANSI T1.113 describes the CPN and CN
23 parameters:

1 Calling Party Number. Information sent in the forward direction to
2 identify the calling party and consisting of the odd/even indicator, nature
3 of address indicator, numbering plan indicator, address presentation
4 restriction indicator, screening indicator, and address signals.
5

6 Charge Number. Information sent in either direction indicating the
7 chargeable number for the call and consisting of the odd/even indicator,
8 nature of address indicator, numbering plan indicator, and address
9 signals.
10

11 The various indicators and the address signals have one or more character
12 positions within the parameter and the standards prescribe specific syntax and semantics
13 guidelines. The situation is essentially the same for both parameters, although CN can be
14 passed in either direction, whereas CPN is passed only in the forward direction. The
15 CPN and CN parameters were created to serve discrete purposes and they convey
16 different meanings consistent with the design purpose. For example, CPN was created
17 largely to make "Caller ID" and other CLASS-based services work. Automatic Number
18 Identification ("ANI") and CN, on the other hand, are pertinent to billing and routing.
19 Halo's signaling practices on the SS7 network comply with the ANSI standard with
20 regard to the address signal content.

21 Halo's practices were also consistent with the Internet Engineering Task Force
22 ("IETF") standards for Session Initiated Protocol ("SIP") and SIP to Integrated Services
23 Digital Network ("ISDN") User Part ("ISUP") mapping. Halo populates the SS7 ISUP
24 IAM CPN parameter with the address signal information that Halo has received from its
25 high volume customer, Transcom. Specifically, Halo's practices are consistent with the
26 IETF Request for Comments ("RFCs") relating to mapping of SIP headers to ISUP
27 parameters. *See, e.g., G. Camarillo, A. B. Roach, J. Peterson, L. Ong, RFC 3398,*
28 *Integrated Services Digital Network (ISDN) User Part (ISUP) to Session Initiation*

1 *Protocol (SIP) Mapping*, © The Internet Society (2002), available at
2 <http://tools.ietf.org/html/rfc3398>.

3 When a SIP INVITE arrives at a PSTN gateway, the gateway SHOULD
4 attempt to make use of encapsulated ISUP (see [3]), if any, within the
5 INVITE to assist in the formulation of outbound PSTN signaling, but
6 SHOULD also heed the security considerations in Section 15. If possible,
7 the gateway SHOULD reuse the values of each of the ISUP parameters of
8 the encapsulated IAM as it formulates an IAM that it will send across its
9 PSTN interface. In some cases, the gateway will be unable to make use of
10 that ISUP - for example, if the gateway cannot understand the ISUP
11 variant and must therefore ignore the encapsulated body. Even when there
12 is comprehensible encapsulated ISUP, the relevant values of SIP header
13 fields MUST 'overwrite' through the process of translation the parameter
14 values that would have been set based on encapsulated ISUP. In other
15 words, the updates to the critical session context parameters that are
16 created in the SIP network take precedence, in ISUP-SIP-ISUP bridging
17 cases, over the encapsulated ISUP. This allows many basic services,
18 including various sorts of call forwarding and redirection, to be
19 implemented in the SIP network.

20
21 For example, if an INVITE arrives at a gateway with an encapsulated
22 IAM with a CPN field indicating the telephone number +12025332699,
23 but the Request-URI of the INVITE indicates 'tel:+15105550110', the
24 gateway MUST use the telephone number in the Request-URI, rather than
25 the one in the encapsulated IAM, when creating the IAM that the gateway
26 will send to the PSTN. Further details of how SIP header fields are
27 translated into ISUP parameters follow.

28
29 Halo's high volume customer will sometimes pass information that belongs in
30 the CPN parameter that does not correctly convey that the Halo high volume customer
31 originating the call in the MTA is the "financially responsible party." When this is the
32 case, Halo still populated the CPN, including the address signal field with the original
33 information supplied by the end user customer. Halo, however, also populated the CN
34 parameter prior to December 29, 2011. The number appearing in the CN address signal
35 field was one assigned to Halo's customer and was the Billing Account Number, or its
36 equivalent, for the service provided in the MTA where the call is processed. In ANSI

1 terms, that is the “chargeable number.” This practice is also consistent with the
2 developing IETF consensus and practices and capabilities that have been independently
3 implemented by many equipment vendors in advance of actual IETF “standards.”

4 SIP “standards” do not actually contain a formal header for “Charge Number.”
5 Vendors and providers began to include an “unregistered” “private” header around 2005.
6 The IETF has been working on a “registered” header for this information since 2008. *See*
7 D. York and T. Asveren, SIPPING Internet-Draft, *P-Charge-Info - A Private Header (P-*
8 *Header) Extension to the Session Initiation Protocol (SIP)* (draft-york-sipping-p-charge-
9 info-01) © The IETF Trust (2008), available at [http://tools.ietf.org/html/draft-york-](http://tools.ietf.org/html/draft-york-sipping-p-charge-info-01)
10 [sipping-p-charge-info-01](http://tools.ietf.org/html/draft-york-sipping-p-charge-info-01) (describing “‘P-Charge-Info’, a private SIP header (P-header)
11 used by a number of equipment vendors and carriers to convey simple billing
12 information.”).The most recent draft was released in September, 2011. *See* D. York, T.
13 Asveren, SIPPING Internet-Draft, *P-Charge-Info - A Private Header (P-Header)*
14 *Extension to the Session Initiation Protocol (SIP)* (draft-york-sipping-p-charge-info-12),
15 © 2011 IETF Trust, available at [http://www.ietf.org/id/draft-york-sipping-p-charge-info-](http://www.ietf.org/id/draft-york-sipping-p-charge-info-12.txt)
16 [12.txt](http://www.ietf.org/id/draft-york-sipping-p-charge-info-12.txt). Halo’s practices related to populating the Halo-supplied Billing Telephone
17 Number (“BTN”) for Transcom in the SS7 ISUP IAM CN parameter were quite
18 consistent with the purposes for and results intended by each of the “Use Cases”
19 described in the most recent document.

20 Halo notes that, with regard to its consumer product, Halo will signal the Halo
21 number that has been assigned to the end user customer’s wireless CPE in the CPN
22 parameter. There is no need to populate the CN parameter, unless and to the extent the
23 Halo end user has turned on call forwarding functionality. In that situation, the Halo end

1 user's number will appear in the CN parameter and the E.164 address of the party that
2 called the Halo customer and whose call has been forwarded to a different end-point will
3 appear in the CPN parameter. Once again, this is perfectly consistent with both ANSI
4 and IETF practices for SIP and SS7 call control signaling and mapping.

5 Halo was exactly following industry practice applicable to an exchange carrier
6 providing telephone exchange service to an end user, and in particular a
7 communications-intensive business end user with sophisticated CPE.

8 **Q: Halo changed its practice on December 29, 2011 to no longer signal Transcom's**
9 **CN. Why did you do so?**

10 **A:** The FCC promulgated new signaling rules that, based on advice of counsel, arguably
11 prohibited our prior practice. The FCC order also calls into question all the decisions we
12 relied on to formulate our business plan, because those cases told us we would be
13 providing telephone exchange service to an end user that originated calls. We still
14 maintain that our prior practice was correct, within industry convention, and devoid of
15 any intent or practical effect to deceive anyone. However, given the FCC's ruling, and
16 hoping to squelch the furor over what we believe is a "red herring" issue, we changed
17 our practice to ensure we were not violating the FCC's new rules. We did not cease this
18 practice because we were "caught" doing something we weren't supposed to be doing,
19 or because we were "outed" by the ILECs for "deceptive" signaling practices. As I will
20 discuss below, this is hogwash.

21 **Q: How do you respond to the ubiquitous allegations that Halo's actions have been**
22 **deceptive, in some way?**

1 On the question of deception, Halo has operated publicly and transparently at all times.
2 The company informed AT&T of its business plans when it adopted its ICAs. We told
3 them we would be providing high-volume service to ESPs, Enterprise customers and
4 private IP networks. We informed them that all of Halo's traffic would be intraMTA,
5 which apparently did not create the same shock and surprise then as it appears to be
6 creating today. When asked by federal and state regulators, we explained our strategy,
7 and the basis for that strategy in our interpretation of the law, without delay, deception,
8 or ambiguity. We used public spectrum, requiring public registration of base stations.
9 We never disguised or altered call details in any way that could deceive any terminating
10 carrier on the nature of Halo's traffic. We operate from an office building in Dallas,
11 Texas with a clear, known, public address. The company hired management with
12 lengthy careers of distinction in the telecommunications industry. I could go on.

13 I trust the Commission will see through these scurrilous allegations, not give
14 them any weight, and instead focus on the substance of applicable law, and the
15 possibility that Halo, while acting in a non-traditional way, just might be operating
16 within the four corners of the law.

17 **Q: Have the ILECs accused Halo with manipulating "Calling Party Number"?**

18 A: No. That is because Halo populates the address signal information that belongs in the
19 CPN unchanged. Halo does not remove, alter, or manipulate this information in any way.

20 **Q: Some ILECs in other states have alleged that Halo is changing the address signal
21 information in the CPN parameter. Is this true?**

22 A: Their allegation is flatly incorrect. First of all, what they are ignoring is that Halo
23 connects to its customers using newer technology that is not SS7-based. Thus there is no

1 “CPN” as such. The FCC’s definition of “Calling Party Number” on its face is limited to
2 SS7-based networks.²⁶ We do not get SS7 “CPN” so there is nothing to change and the
3 rules they quote simply do not apply to begin with. Our IP-based systems do, however
4 have call control methods and protocols, and there is a location for the same type
5 information. What Halo does is look to that location, pull out the information that
6 belongs in an SS7 CPN parameter and then our “signaling gateway” populates that very
7 same information in the SS7 CPN parameter. Halo never populates the SS7 CPN
8 parameter with an address signal that is different from address signal contained the
9 equivalent IP-based information we receive from our customer. We do not change, strip,
10 alter, modify, manipulate or do anything else to “CPN.”

11 **Q: Let’s discuss “Charge Number” a little more. What is going on here?**

12 **A:** My discussion above about the fact that we are an IP-based network applies here, too.
13 But setting that aside, the FCC’s rules and industry practices for the SS7 CN parameter
14 are different than for CPN. The FCC has a different definition for “Charge Number.”²⁷
15 Two things are important with respect to this definition. First, it uses different
16 terminology (“billing number”) than the ANSI standard (“chargeable number”). Second,
17 notice that the definition refers to “delivery of the calling party’s billing number in a
18 Signaling System 7 environment by a local exchange carrier to any interconnecting

²⁶ On the advice of counsel, Halo relies on: 47 C.F.R. § 64.1600(e): “(e) Calling party number. The term ‘Calling Party Number’ refers to the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message associated with an interstate call on a Signaling System 7 network.”

²⁷On the advice of counsel, Halo relies on: 47 C.F.R. § 64.1600(f): “The term ‘charge number’ refers to the delivery of the calling party’s billing number in a Signaling System 7 environment by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users.”

1 carrier ...” Halo is an *exchange carrier* but it is not a *local exchange carrier*. One could
2 fairly say the definition excludes us.²⁸

3 Regardless, the telephone companies’ contentions regarding “industry practices”
4 are wrong to the extent they imply the practices do not allow an exchange carrier to
5 populate an address signal in the CN where one did not exist before, or to even change it.
6 The industry practice is to in fact do so when necessary to indicate that the end user
7 customer’s billing number (“chargeable number”) is different from what might possibly
8 be inferred from the CPN information.²⁹

9 **Q: In other states, some of the telephone companies assert that industry practices have**
10 **provided that the CN address signal must always represent a number from the first**
11 **“originating network.” Is that true?**

12 **A:** Not according to our experts. If this were true, then it seems to me that AT&T has been
13 violating the rules because they routinely replace the original CN or insert a new CN
14 when one of their users has turned on “call forwarding,” a call is addressed to that user
15 from a different network, and their user has forwarded the call to a number associated
16 with yet a third network.

17 Unless someone can point us to different standards that we’re not familiar with,
18 Charge Number information is not restricted to an address from only the first network.

²⁸ The FCC’s new rule 64.1601(a)(1) (which went into effect on November 29, 2011) may, however, apply. In pertinent part it says that “...Entities subject to this provision that use Signaling System 7 (SS7) are required to transmit the calling party number (CPN) associated with all PSTN Traffic in the SS7 ISUP (ISDN User Part) CPN field to interconnecting providers, and are required to transmit the calling party’s charge number (CN) in the SS7 ISUP CN field to interconnecting providers for any PSTN Traffic where CN differs from CPN.” I’m not sure how a CMRS provider can send “CN” when the applicable definition of CN expressly applies only to LECs, but I will let the lawyers debate that point.

²⁹See ITU-T series Q.760-Q.769. ANSI T1.113 describes the CN parameter:

Charge Number. Information sent in either direction indicating the chargeable number for the call and consisting of the odd/even indicator, nature of address indicator, numbering plan indicator, and address signals. (emphasis added)

1 Its purpose is to designate the billing number of the carrier's end user customer.
2 Sometimes the signaling carrier's end user customer is served by a network other than
3 the first network, as would be the case with the call forwarding example. In our case,
4 Transcom is our end user customer. Therefore, we did signal a number we assigned to
5 Transcom for use as the "Billing Telephone Number" for the account in that MTA, just
6 as would an ILEC with a large business customer running a "leaky PBX." This was fully
7 in accord with industry practices.

8 **Q: Would the telephone companies be able to make the same signaling claims**
9 **regarding the CN address signal information if Transcom is an "end user"**
10 **purchasing "telephone exchange service?"**

11 **A:** No. While the technology is different the functionality we provide to Transcom is much
12 like what telephone companies have provided to large "communications-intensive"
13 business customers with PBXs for many years. Even AT&T has admitted that the CN
14 parameter was designed to allow presentation of a billing number associated with a
15 business user's PBX. Our CN signaling practices were carefully designed to be
16 consistent with those applicable to a provider of telephone exchange service to a large
17 and communications-intensive business end user. Since the FCC has now changed all of
18 the rules, we are attempting to change our practices.

19 **Q: When did Halo begin to populate Transcom's BTN in the CN address signal?**

20 **A:** In February of 2011, soon after the FCC released its proposed "phantom signaling"
21 rules.³⁰ The proposed rules expressly contemplated that CN would be populated with the

³⁰ NPRM and FNPRM, *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., FCC 11-13, , ¶ 631 26 FCC Rcd 4554 (Feb. 9, 2011) and published at 76 Fed. Reg. 11632 (March 2, 2011).

1 number of the “responsible party.”³¹ In our case, that is Transcom. Halo was being
2 proactive and decided to implement the proposed rules in order to prevent allegations of
3 supporting “phantom traffic.”

4 **Q: How did that work out for you?**

5 A: The ILECs contended that conforming to the FCC’s proposed phantom traffic rules
6 resulted in phantom traffic. I have yet to fully understand that one.

7 **Q: Has the FCC now promulgated final rules?**

8 A: Yes. They apparently believed that the language in the proposed rule concerning
9 “financially responsible party” caused problems.³² So they came up with a different
10 approach. We are not sure that the change helps to clarify anything, and we believe that
11 even under the new rules it is proper to signal the Transcom BTN, but in the interest of
12 trying to reduce the noise level in all these state proceedings Halo ceased populating
13 Transcom’s BTN in the CN address signal on December 29, 2011, which is the effective
14 date of the new rules. We are doing this even though it is not clear – given the debate
15 over whether Halo is the originating carrier or an “intermediate carrier” – which of §
16 64.1601(a)(1) or § 64.1601(a)(2) applies. I continue to believe we are the originating
17 carrier and § 64.1601(a)(1) applies and we are supposed to populate the CN since it

³¹See Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support*, WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 11–161, ¶ 719, __ FCC Rcd __ (rel. November 18, 2011) (“*2011 USF/ICC Rules Order*”) (“719. In the USF/ICC Transformation NPRM, we also sought comment on a proposed rule that would prohibit service providers from altering or stripping relevant call information. More specifically, we proposed to require all telecommunications providers and entities providing interconnected VoIP service to pass the calling party’s telephone number (or, if different, the financially responsible party’s number), unaltered, to subsequent carriers in the call path. ...” (emphasis added)

³²*2011 USF/ICC Rules Order* ¶ 720. (“In response to comments in the record, we make several clarifying changes to the text of the proposed rules in this section. First, commenters objected to the use of the undefined term “financially responsible party” in the proposed rules. We agree with the concerns and clarify that providers are required to pass the billing number (e.g., CN in SS7) if different from the calling party’s number. ...” (footnotes omitted)

1 differs from the CPN. Sadly, I suspect that the very entities that complained about Halo
2 populating this information in the CN will now complain that we have stopped.
3

4 **FCC RULEMAKING ORDER**

5 **Q: The ILECs have recently begun to claim that the FCC ruled against Halo on these**
6 **issues, and that the FCC ruled that access charges are due on Halo's traffic. Do you**
7 **agree?**

8 A: No, I do not agree. The FCC assumed, without determining or finding, that *the ILECs'*
9 *allegations that Halo's customer is a carrier were true.* Halo never claimed its customer
10 was a carrier, and the FCC expressly did not decide the question. The FCC then found
11 that if Halo's customer is a carrier then the traffic is not intraMTA. This was no surprise
12 to Halo, since we had acknowledged this point all along. Our position was then, and is
13 now, that since Transcom is not a carrier then Transcom is an end user and an end-point,
14 and as such a call originator – just like all other ESPs that “originate further
15 communications.”

16 I must point out, however, that the FCC then went on to characterize Halo's
17 traffic as “transit.” It then defined transit as “non-access.” *See ¶ 1311 of the recent FCC*
18 *order.*³³ Thus, if one wrongly accepts the proposition that Transcom is a carrier then the
19 ILECs still cannot claim an access entitlement for Transcom's traffic. They cite to
20 paragraphs 1005-1006. Here is what those paragraphs say, including the footnotes:

³³ 1311. Transit. Currently, transiting occurs when two carriers that are not directly interconnected exchange **non-access** traffic by routing the traffic through an intermediary carrier's network. Thus, although transit is the functional equivalent of tandem switching and transport, **today transit refers to non-access traffic**, whereas tandem switching and transport apply to access traffic. ... (emphasis added)

1 1005. We first address a dispute regarding the interpretation of the intraMTA
 2 rule. Halo Wireless (Halo) asserts that it offers “Common Carrier wireless
 3 exchange services to ESP and enterprise customers” in which the customer
 4 “connects wirelessly to Halo base stations in each MTA.”²¹²⁰ It further asserts
 5 that its “high volume” service is CMRS because “the customer connects to
 6 Halo’s base station using wireless equipment which is capable of operation while
 7 in motion.”²¹²¹ Halo argues that, for purposes of applying the intraMTA rule,
 8 “[t]he origination point for Halo traffic is the base station to which Halo’s
 9 customers connect wirelessly.”²¹²² On the other hand, ERTA claims that Halo’s
 10 traffic is not from its own retail customers but is instead from a number of other
 11 LECs, CLECs, and CMRS providers.²¹²³ NTCA further submitted an analysis of
 12 call records for calls received by some of its member rural LECs from Halo
 13 indicating that most of the calls either did not originate on a CMRS line or were
 14 not intraMTA, and that even if CMRS might be used “in the middle,” this does
 15 not affect the categorization of the call for intercarrier compensation
 16 purposes.²¹²⁴ These parties thus assert that by characterizing access traffic as
 17 intraMTA reciprocal compensation traffic, Halo is failing to pay the requisite
 18 compensation to terminating rural LECs for a very large amount of traffic.²¹²⁵
 19 Responding to this dispute, CTIA asserts that “it is unclear whether the
 20 intraMTA rules would even apply in that case.”²¹²⁶

21
 22 1006. We clarify that a call is considered to be originated by a CMRS provider
 23 for purposes of the intraMTA rule only if the calling party initiating the call has
 24 done so through a CMRS provider. Where a provider is merely providing a
 25 transiting service, it is well established that a transiting carrier is not considered
 26 the originating carrier for purposes of the reciprocal compensation rules.²¹²⁷
 27 Thus, we agree with NECA that the “re-origination” of a call over a wireless link
 28 in the middle of the call path does not convert a wireline-originated call into a
 29 CMRS-originated call for purposes of reciprocal compensation and we disagree
 30 with Halo’s contrary position.²¹²⁸

31
 32 ²¹²¹ Halo Aug. 12, 2011 *Ex Parte* Letter, Attach. at 8.

33 ²¹²² *Id.* Attach. at 9.

34 ²¹²³ ERTA July 8, 2011 *Ex Parte* Letter, at 3.

35 ²¹²⁴ NTCA July 18, 2011 *Ex Parte* Letter at 7.

36 ²¹²⁵ NTCA July 18, 2011 *Ex Parte* Letter at 1; ERTA *Ex Parte* Letter at 1, 3
 37 (traffic from Halo includes “millions of minutes of intrastate access, interstate
 38 access, and CMRS traffic originated by customers of other companies;” one day
 39 study of Halo traffic showed traffic was originated by customers of “176
 40 different domestic and Canadian LECs and CLECs and 63 different Wireless
 41 Companies”).

42 ²¹²⁶ CTIA August 3 *PN* Comments at 9.

43 ²¹²⁷ See *Texcom, Inc. d/b/a Answer Indiana v. Bell Atlantic Corp*, Order on
 44 Reconsideration, 17 FCC Rcd 6275, 6276 para. 4 (2002) (“Answer Indiana’s
 45 argument assumes that GTE North receives reciprocal compensation from the
 46 originating carrier, but our reciprocal compensation rules do not provide for such

1 compensation to a transiting carrier.”); *TSR Wireless, LLC v. U.S. West*
2 *Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 11166,
3 ¹¹¹⁷⁷ n.70 (2000).

4 ²¹²⁸ See NECA Sept. 23, 2011 *Ex Parte* Letter Attach. at 1; Halo Aug. 12, 2011
5 *Ex Parte* Letter at 9. We make no findings regarding whether any particular
6 transiting services would in fact qualify as CMRS. See CTIA August 3 *PN*
7 Comments at 9 & n.29 (“the information available does not reveal whether
8 [Halo’s] offering is a mobile service”).
9

10 The meaning and result of this discussion is largely legal, and I will leave it to
11 the lawyers to brief, including whether the discussion can be lawfully applied to traffic
12 before December 29, 2011 and whether the FCC was addressing the topic in an
13 adjudicatory rather than a legislative capacity.

14 Paragraph 1005 describes the FCC’s understanding of the parties’ contentions.
15 Paragraph 1006 then presents their analysis, such as it is. They mention Halo’s August
16 12, 2011 *Ex Parte* Letter. I am attaching that document hereto as Exhibit RW-1. The
17 FCC references pages 8 and 9. They attribute an assertion to Halo, however, that we did
18 not make: we never used “re-origination.” Instead, we have said that Transcom uses our
19 service to “initiate a further communication.” This is more than just semantics. If the
20 FCC is saying that ESPs are not end users, they are not an end point for purposes of
21 intercarrier compensation, are really carriers and IXCs and access is due from the ESP’s
22 exchange carrier when the ESP “initiate[s] a further communication” then the FCC’s and
23 the ILECs’ quarrel is not really with Halo. Instead they are saying the D.C. Circuit’s *Bell*
24 *Atlantic* and *Worldcom* decisions were wrong when it resolved this very issue by holding
25 that ESPs are not carriers, do not provide telephone toll and their traffic is not exchange
26 access – even though they use telecommunications to “initiate a further communication.”

27 The ILECs were the ones using “re-origination,” not Halo. They should be the
28 ones that explain whether that is different from “originate a further communication” and

1 if it is the same why this issue is not already resolved against their position under the
2 D.C. Circuit precedent. The FCC insisted in paragraph 958 that its order was consistent
3 with *Bell Atlantic* and *Worldcom*, so I can only assume there must be some difference
4 between “initiate a further communication” and “re-origination.”

5 Further, it seems to me that the FCC was not really resolving the actual issue or
6 agreeing with either side, and it was clearly not adopting the ILECs’ theory that access is
7 due. The FCC did not expressly address the prescribed result when Halo’s customer is in
8 fact an end user. The FCC refused to resolve whether VoIP is a telecommunications
9 service or an information service. The FCC never mentioned Transcom by name and
10 never discussed the issue of whether Transcom is or is not a carrier.

11 In paragraph 1006 the FCC ended up saying that if this is a “re-origination” then
12 Halo is “providing a transiting service.” Thankfully, they provided a definition of
13 “transit” in paragraph 1311:

14 1311. Transit. Currently, transiting occurs when two carriers that are not directly
15 interconnected exchange non-access traffic by routing the traffic through
16 an intermediary carrier’s network. Thus, although transit is the functional
17 equivalent of tandem switching and transport, today transit refers to non-
18 access traffic, whereas tandem switching and transport apply to access
19 traffic. As all traffic is unified under section 251(b)(5), the tandem
20 switching and transport components of switched access charges will come
21 to resemble transit services in the reciprocal compensation context where
22 the terminating carrier does not own the tandem switch. (emphasis
23 added).

24 Since the FCC characterized Halo as providing “transit” that would mean that
25 Halo is the “intermediary carrier” referenced in paragraph 1311. The FCC made it quite
26 clear that *transit is non-access traffic*. Even if this traffic is not “intraMTA” it is *also* not
27 access. That is why we continue to assert that it is “non-access” traffic. Further, the
28 prevailing rule is that a transit provider is not responsible for termination charges: the
29

1 *originating carrier* is the responsible party. Therefore, even if you read paragraph 1006
2 the way the ILECs do, access charges cannot be applied against Halo. If the ILECs are
3 right that Transcom is not the originating carrier, then Transcom is not responsible
4 either.

5 Apparently neither side emerged unscathed. The ILECs cannot claim that the
6 FCC rulemaking order supports their claim that Halo and Transcom are avoiding access
7 charges – for traffic before December 29, 2011 or after that date. The ILECs need to
8 send their bills to the carriers they claim are the actual originating carriers for this traffic.

9 **Q: Is there a change of law provision in the ICA between Halo and AT&T?**

10 A: Yes.

11 **Q: Is Halo planning to initiate this provision?**

12 A: Yes. In fact, Halo recently stated its intention to initiate the change of law provision in
13 the ICA in its Motion to Extended the Exclusivity Period filed in the Bankruptcy
14 proceeding.

15
16 **COUNT IV: FACILITIES CHARGES**

17 **Q. Has Halo ordered any interconnection “transport facilities” from AT&T?**

18 A: Yes, we have. But the ones we ordered are not the ones AT&T is complaining about. I
19 will explain this point further below. Not all of the things that AT&T is calling
20 “interconnection transport facilities” are in fact “facilities.”³⁴ Halo is not responsible for
21 them in any event.

³⁴ For purposes of this testimony I may still refer to the cross-connects and multiplexing as “facilities.” I do so merely to use consistent terminology. Halo does not agree they are actually “facilities.”

1 **Q: Please describe the physical interconnection that is in place between Halo and**
2 **AT&T in Florida.**

3 A: The architecture in place is as follows: Halo obtains transmission from its network to
4 AT&T tandem buildings from third party service providers. In the vast majority of
5 locations, the third party service provider has transport facilities and equipment in the
6 tandem building, either in a “meet me room” area or via collocation facilities purchased
7 from AT&T. In one location in Florida, Miami,³⁵ Halo’s third party provider could not
8 provide transport to the AT&T tandem Halo desired to use as the Type 2A interface
9 location. In this instance, AT&T provisioned, and Halo is paying for, entrance facilities
10 from AT&T to reach the tandem building. Those are facilities, but are not part of this
11 dispute.

12 In all Florida markets, except as noted above in Miami, Halo has secured third
13 party transport all the way up to the mutually-agreed POI. The third party transport
14 provider will have a collocation arrangement in the AT&T Florida tandem. As part of its
15 third party provided transport arrangements, Halo secures a Letter of Agency/Channel
16 Facility Assignment (“LOA/CFA”) from its third party transport service provider. The
17 CFA portion of the LOA/CFA document consists of an Access Customer Terminal
18 Location (“ACTL”), the third party provider’s circuit ID, and a specific channel facility
19 assignment (at the DS-3 or DS-1 level depending on the arrangements) on the third
20 party’s existing transport facilities. This CFA defines the specific rack, panel and jack
21 locations at Halo’s third party transport providers’ digital signal cross-connect (“DSX”)
22 where Halo and AT&T meet to exchange traffic. In other words, the mutually-agreed

³⁵ The Miami entrance facility arrangement is not in issue in this matter.

1 POI between AT&T and Halo is located where AT&T “plugs in” its network on the
2 DSX panel where the CFA is given to Halo by the third party transport provider. This is
3 memorialized by the fact that each POI will have a POI Common Language Location
4 Identifier (“CLLI”) code, and the CLLI code corresponds exactly to the CFA location.

5 The ACTL CLLI and the corresponding CFA CLLI, are each composed of four
6 sub-fields: (1) four characters to denote the city (formally called the Geographical code);
7 (2) two characters to denote the state or province (the Geopolitical code); (3) two
8 characters to denote the specific location or building address (the Network-Site code);
9 and (4) three characters to specify a particular piece of equipment (the Network Entity
10 code). The Network Entity code clearly is not related to AT&T’s tandem switch; instead,
11 it corresponds to the third party transport provider’s DSX. The POI is where Halo’s
12 network ends. Halo has expended considerable sums to get to the POI location, which is
13 in the AT&T tandem. AT&T is cost-responsible from there.

14 In order to implement interconnection, AT&T has to install *cross-connects* that
15 go to the POI at the third party transport provider’s DSX that is inside the tandem
16 building so that the parties can exchange traffic. AT&T has wrongly chosen to call these
17 cross-connects “channel terminations” and is attempting to bill Halo out of the access
18 tariff for these cross-connects even though they are on AT&T’s side of the POI. AT&T
19 is also charging Halo for certain multiplexing (DS3/DS1, and DS1/DS0).

20 There are three different physical interconnect situations in place today between
21 Halo and AT&T that have POI nuances, but do not fundamentally change the POI
22 arrangement from a cost responsibility stand point. These include:

23 a. Halo hand off at the T1 level;

- 1 b. Halo hand off at the DS-3 level, and where Halo's third party service
2 provider provides a DS-3 to DS-1 mux/demux; and
3
4 c. Halo hand off at the DS-3 level, and where Halo has ordered, and AT&T
5 is providing, DS-3 to DS-1 mux/demux.
6

7 In the first two situations (a) and (b), the POI is either a DSX-1 or DSX-3 cross
8 connect frame owned by Halo's third party service provider. In the third situation (c), the
9 POI can either be considered the DSX-3 cross-connect frame of Halo's service provider,
10 or the DS-3/DS-1 muxing equipment used by AT&T to provide the muxing service Halo
11 has ordered and is receiving from AT&T. But either way, the POI does not extend
12 beyond the DS-1 interface point, and AT&T's responsibility to cross-connect to a DS-1
13 interface is not changed.

14 **Q: Please explain a little more about multiplexing.**

15 The DS-3 to DS-1 muxing/demuxing is done purely for AT&T's convenience; Halo was
16 and is at all times prepared to support DS3 physical layer capability all the way into the
17 tandem switch. Nonetheless, even though Halo could deny cost responsibility in these
18 cases, Halo is paying AT&T for the multiplexing. In other words, these charges are not
19 in dispute. Other than for this DS-3 to DS-1 muxing, AT&T is not providing any
20 transport or multiplexing on Halo's side of the POI. If and to the extent AT&T insists on
21 moving forward with this part of the Complaint, Halo reserves the right to seek a refund
22 for the payments it has made for DS3/DS1 multiplexing.

23 **Q: How much have you paid AT&T for DS3 multiplexing?**

24 A: To date, we have paid AT&T approximately \$14,000 for DS1/DS3 multiplexing in
25 Florida.

26 **Q: What is your position on the multiplexing charges?**

1 A: AT&T appears to be attempting to recover charges for DS1/DS0 multiplexing that
2 AT&T performs to knock out 24 DS0s from each cross-connect and then connect to a
3 port on AT&T's tandem switch. This multiplexing is clearly on AT&T's side of the POI.
4 Further, it may well be not even necessary. Most Class 4 tandem switches today have
5 DS3 trunk port interfaces and DS1 interfaces are almost universal. Halo cannot
6 understand why AT&T believes it should, and Halo must pay for, demultiplexing down
7 to the DS0 level to get to the termination on the tandem trunk port. Regardless, the fact
8 is that the DS1/DS0 multiplexing is occurring on AT&T's side of the POI.

9 **Q: What is your position on the port charges?**

10 A: We have disputed them. AT&T is responsible for the costs of its own switch ports, just
11 as Halo is responsible for the cost of Halo's switch ports (or the equivalent).

12 **Q: What is your position on the so-called "facility" charges AT&T is trying to assess?**

13 A: Several of AT&T's so-called "facility" charges, and the charges subject to dispute,
14 entirely relate to discrete connections and equipment functions that run from the POI to
15 AT&T's tandem switch, including the de-multiplexing from a valid DS-1 interface to the
16 DS-0 level for tandem trunk port physical termination. All of this is on AT&T's side of
17 the POI, and many relate to "trunks" and "trunk groups." These are not "facilities." Even
18 if cross-connects and multiplexing can be called "facilities," the ICA is crystal-clear that
19 Halo is only responsible for "facilities" up to the POI and AT&T is responsible for all
20 facilities on its side of the POI.

21 **Q: What does the ICA have to say about all of this?**

22 A: Under the ICA, AT&T may only charge for interconnection "facilities" when AT&T-
23 provided "facilities" are used by Halo to reach the mutually-agreed Point of

1 Interconnection ("POI"). This is made clear by the usage in IV.A³⁶ and then IV.B³⁷ and
 2 C,³⁸ which must be read in conjunction with VI.B.2 a and b.³⁹

³⁶ A. By mutual agreement of the parties, trunk groups arrangements between Carrier and BellSouth shall be established using the interconnecting facilities methods of subsection (B) of this section. Each party will use commercially reasonable efforts to construct its network, including the interconnecting facilities, to achieve optimum cost effectiveness and network efficiency.

³⁷ B. There are three methods of interconnecting facilities: (1) interconnection via facilities owned, provisioned and/or provided by either party to the other party[*note 1*] (2) physical collocation; and (3) virtual collocation where physical collocation is not practical for technical reasons or because of space limitations. Type 1, Type 2A and Type 2B interconnection arrangements described in BellSouth's General Subscriber Services Tariff, Section A35, or, in the case of North Carolina, in the North Carolina Connection and Traffic Interchange Agreement effective June 30, 1994, as amended, may be purchased pursuant to this Agreement provided, however, that such interconnection arrangements shall be provided at the rates, terms and conditions set forth in this Agreement. Rates and charges for both virtual and physical collocation may be provided in a separate collocation agreement. Rates for virtual collocation will be based on BellSouth's Interstate Access Services Tariff, FCC #1, Section 20 and/or BellSouth's Intrastate Access Services Tariff, Section E20. Rates for physical collocation will be negotiated on an individual case basis.

Note 1 provides:

On some occasions Carrier may choose to purchase facilities from a third party. In all such cases carrier agrees to give BellSouth 45 (forty five) days notice prior to purchase of the facilities, in order to permit BellSouth the option of providing one-way trunking, if, in its sole discretion BellSouth believes one-way trunking to be a preferable option to third party provided facilities. Such notice shall be sent pursuant to Section XXIX. In no event shall BellSouth assess additional interconnection costs or per-port charges to Carrier or its third-party provider should Carrier purchase facilities from a third party, e.g. the same charges that BellSouth would charge Carrier should it provide the service.

³⁸C. The parties will accept and provide any of the preceding methods of interconnection. Carrier may establish a POI on BellSouth's network at any technically feasible point in accordance with the 47 CFR 51.703(b). Carrier must designate a POI at least one BellSouth access tandem within every LATA Carrier desires to serve, or alternatively, Carrier may elect (in addition to or in lieu of access interconnection at BellSouth's access tandem) to interconnect directly at any BellSouth end office for delivery of traffic to end users served by that end office. Such interconnecting facilities shall conform, at a minimum, to the telecommunications industry standard of DS-1 pursuant to Bellcore Standard No. TR-NWT-00499. Signal transfer point, Signaling System 7 ("SS7") connectivity is required at each interconnection point after Carrier implements SS7 capability within its own network. BellSouth will provide out-of band signaling using Common Channel Signaling Access Capability where technically and economically feasible, in accordance with the technical specifications set forth in the BellSouth Guidelines to Technical Publication, TRTSV- 000905. The parties' respective facilities shall (i) provide the necessary on-hook, off-hook answer and disconnect supervision (ii) shall hand off calling party number ID when technically feasible and (iii) shall honor privacy codes and line blocking requests if possible. In the event a party interconnects via the purchase of facilities and/or services from the other party, it may do so though purchase of services pursuant to the other party's interstate or intrastate tariff, as amended from time to time, or pursuant to a separate agreement between the Parties. In the event that such facilities are used for two-way interconnection, the appropriate recurring charges for such facilities will be shared by the parties based upon percentages equal to the estimated or actual percentage of traffic on such facilities, in accordance with Section VI.B below.

³⁹ B. Compensation of Facilities

1 GTC Section IV.A clearly distinguishes between “facilities” and any trunk
2 groups that establish “through connections” between the parties’ switches, and lie on
3 both sides of the POI. “By mutual agreement of the parties, trunk groups arrangements
4 between Carrier and BellSouth shall be established using the interconnecting facilities
5 methods of subsection (B) of this section.”

6 IV.C then goes on to provide, in pertinent part, that

7 In the event a party interconnects via the purchase of facilities and/or
8 services from the other party, it may do so through purchase of services
9 pursuant to the other party’s interstate or intrastate tariff, as amended
10 from time to time, or pursuant to a separate agreement between the
11 Parties. In the event that such facilities are used for two-way
12 interconnection, the appropriate recurring charges for such facilities will
13 be shared by the parties based upon percentages equal to the estimated or
14 actual percentage of traffic on such facilities, in accordance with Section
15 VI.B below.

16 This provision is addressing **facilities** and not the trunks that ride on facilities.
17
18 Again, trunks ride on facilities, and trunks will extend from switch port to switch port,
19 with a POI somewhere in between. Each party will contribute the facilities that hold the
20 trunk groups and their responsibilities begin and end at the POI.

21 IV.C establishes the “POI” concept, which serves as the location where traffic
22 exchange occurs and where a carrier’s financial responsibility for providing facilities

-
1. Where one-way trunking is used, each party will be solely responsible for the recurring and non-recurring cost of that facility up to the designated POI(s) on the terminating party’s network.
 2. The Parties agree to share proportionately in the recurring costs of two-way interconnection facilities.
 - a. To determine the amount of compensation due to Carrier for interconnection facilities with two-way trunking for the transport of Local Traffic originating on BellSouth’s network and terminating on Carrier’s network, Carrier will utilize the prior month’s undisputed Local Traffic usage billed by BellSouth and Carrier to develop the percent of BellSouth originated Local Traffic.
 - b. BellSouth will bill Carrier for the entire cost of the facility. Carrier will then apply the BellSouth originated percent against the Local Traffic portion of the two-way interconnection facility charges billed by BellSouth to Carrier. Carrier will invoice BellSouth on a monthly basis, this proportionate cost for the facilities utilized by BellSouth.

1 ends and reciprocal compensation for completing the other carrier's traffic begins. Under
2 the ICA, both parties are responsible for bringing facilities to the POI at their own cost,
3 and do not recover "facility" charges from the other for facility costs unless party A buys
4 a "facility" from party B to get from party A's network to the POI. Facility costs on the
5 other side of the POI are not recoverable as such; instead, the providing party's cost
6 recovery occurs through reciprocal compensation.⁴⁰

7 **Q: Why do you say the cost recovery for the traffic in issue comes through reciprocal**
8 **compensation?**

9 A: I would invite the Commission to review the definition of "transport" in FCC rule
10 51.701(c).⁴¹ Reciprocal compensation "Transport" includes "transmission and any
11 necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of
12 the Act from the interconnection point between the two carriers to the terminating
13 carrier's end office switch." (emphasis added.) This has to mean AT&T recovers the cost
14 of "facilities" on its side of the POI through reciprocal compensation rather than
15 "interconnection facilities" at least insofar as the "facilities" are used to carry traffic
16 from Halo to AT&T that goes to an AT&T end user.

17 **Q: Please continue your discussion of the ICA terms.**

18 A: V.C states in pertinent part, "BellSouth and Carrier will share the cost of the two-way
19 trunk group carrying both Parties traffic proportionally when purchased via this

⁴⁰ Counsel has requested that I provide citations to *Southwestern Bell v. PUC*, 348 F.3d 482 (5th Cir. 2003). The Fifth Circuit defined the POI as "a point designated for the exchange of traffic between two telephone carriers. It is also the point where a carrier's financial responsibility for providing facilities ends and reciprocal compensation for completing the other carrier's traffic begins." 348 F.3d at 484. As applied to our situation, that means that AT&T recovers the cost of the "facilities" in issue as part of reciprocal compensation and § 251(b)(5) rather than "interconnection" under § 251(c)(2).

⁴¹ Transport. For purposes of this subpart, transport is the transmission and any necessary tandem switching of telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

1 Agreement..."The "cost sharing of 2-way trunks based on proportional originating use"
2 concept only applies when Halo uses AT&T-supplied facilities to support trunking as
3 one of the alternatives in IV to get to the POI.

4 **Q: Is this reading of the ICA consistent with the FCC rules?**

5 A: Yes. FCC Rules 51.701(c) (discussed above) and 51.709(b), as well as paragraph 1062
6 of the *Local Competition Order*, all support this reading. The phrase "between two
7 carrier's networks" (51.709(c)) and "between its network and the interconnecting
8 carrier's network" (*Local Competition Order*) both make clear that ILECs cannot impose
9 charges on the ILEC's side of the POI when the interconnecting carrier does not obtain
10 ILEC facilities on the interconnecting carrier's side of the POI.

11 **Q: Did Halo "order" these cross-connects and DS1/DS0 multiplexing functions with**
12 **the implied or express agreement to pay for them notwithstanding what the**
13 **agreement says?**

14 A: AT&T's Type 2A interconnection implementation process requires the CMRS provider
15 to submit the order, even when part of what is being "ordered" pertains to facilities,
16 trunks and other things on AT&T's side of the POI and for which the "ordering" carrier
17 is not financially responsible. There is no choice; if the order is not submitted in a way
18 the system likes, the order is rejected. Placement of such orders does not create an
19 obligation on Halo's part to pay for facilities on AT&T's side of the POI. More
20 specifically, following the mandatory procedures in AT&T's OSS cannot somehow
21 constitute a waiver of or amendment to the ICA terms relating to cost responsibility.

22 When the parties were initiating interconnection, we communicated to AT&T
23 orally and in writing where the POI would be. We secured a POI CLLI corresponding to

1 the CFA location within the AT&T building for each LATA and that was what we tried
 2 to use on the order forms. AT&T never took issue with establishing the POI at the CFA
 3 location. Halo expressed willingness to follow AT&T's process, but also maintained
 4 clarity on the POI designation as well as the fact that submitting orders did not change
 5 the cost responsibility arrangements in the ICA.

6 **Q: What are the POI locations in Florida?**

7 A: Here is a list of each, along with the situation regarding entrance facilities and
 8 multiplexing:

LATA name	LAT #	AT&T Tandem CLLI	POI CLLI	DS3/DS1 Interface	AT&T DS3\ DS1 Muxing (Y/N)	AT&T Entrance Facility (Y/N)
Miami	460	MIAMFLGR05T	MIAMFLGRWE2	DS3	Y	Y
Gainesville	454	GSVLFLMA01T	GSVLFLMAW21	DS3	Y	N
Orlando	458	ORLDFLMA04T	ORLDFLMAW38	DS3	Y	N
Pensacola	448	PNSCFLWA01T	PNSCFLWAWAN	DS1	N	N
Panama City	450	PNSCFLMA04T	PNCYFLMAIMD	DS1	N	N
Daytona	456	DYBHFLPO01T	DYBHFLPOWAA	DS1	N	N

9

10 As you can see, with the exception of Miami, where an Entrance Facility applies,
 11 the POI CLLI for the other locations conveys that the POI is in the same building as the
 12 tandem, but is *not at the tandem switch*. Rather it is at the place where we get CFA/LOA
 13 from our vendor. Specifically, the POI CLLI expressly denotes the rack, panel and jack
 14 location at Halo's third party transport provider's DSX as reflected from the precise
 15 "Channel Facility Assignment" we receive from our third party transport vendor.

16 **Q: What do you believe AT&T is trying to do?**

17 A: AT&T is attempting to shift cost responsibility for what it calls "facilities" to Halo when
 18 the ICA assigns responsibility to AT&T because the "facilities" are all on AT&T's side

1 of the POI. AT&T's billings for the cross-connects, DS3/DS1 multiplexing and the
2 DS1/DS0 multiplexing that Halo has disputed are incorrect and not supported by the
3 ICA.

4 **Q: Does this conclude your testimony?**

5 A: Yes. I reserve the right to make corrections of any errors we may discover by submitting
6 an *errata*.

1 **BY MS. LARSON:**

2 Q. And, Mr. Wiseman, have you prepared a
3 testimony summary for today?

4 A. I have.

5 Q. I believe it's now appropriate for you to read
6 that for us.

7 A. Okay. Good afternoon, Commissioners and
8 Commission staff. My name is Russ Wiseman, and I
9 appreciate the opportunity to summarize my testimony in
10 this proceeding.

11 As I mentioned in my prefiled testimony, Halo
12 faced many obstacles to establishing a viable consumer
13 broadband services business. I mentioned the challenge
14 of achieving a viable return on capital and needing a
15 different business model from the more traditional
16 models to achieve viability so that consumers and small
17 businesses in rural towns could receive broadband
18 services from Halo. This is important background
19 testimony that establishes Halo's motives in developing
20 the services it ultimately offered to Transcom and which
21 are the subject of the dispute with AT&T we are here
22 today to address.

23 Substantial and costly efforts were expended
24 by Halo to build this consumer business, and while we
25 faced certain commercial limitations to being as

1 aggressive as we would have liked to have been, the
2 primary catalyst to the cessation of those efforts was
3 the sudden and substantial litigation cost incurred by
4 these disputes with AT&T. Were it not for that, I am
5 confident we would have continued to build our consumer
6 subscriber base, including in Florida, and most likely
7 would have expanded our wireless network with additional
8 cell sites.

9 Coming back to the services in question in
10 this proceeding, Halo believes strongly that we are not
11 in breach of the ICA with AT&T on any terms and that
12 access charges are not due on Halo's traffic in
13 question. As stated in my prefiled testimony, these
14 positions are founded on the regulations, the facts, and
15 the belief that Halo's high volume service is a CMRS
16 service delivered in conformance with federal
17 regulations pertaining to such services and delivered to
18 a business intensive end user/customer who uses wireless
19 stations to originate communications with Halo at Halo's
20 wireless base stations. In fact, we supported AT&T --

21 **COMMISSIONER GRAHAM:** Sir, if I can get you to
22 just slow down a little bit. You're about to wear out
23 my court reporter. If you go over five minutes I won't
24 cut you off, I promise.

25 **THE WITNESS:** I appreciate that. I did notice

1 the smoke. I was wondering if that was --

2 (Laughter.)

3 **THE WITNESS:** Thank you, sir.

4 In fact, we supported AT&T visiting these
5 wireless facilities and they found them to be both
6 present and exactly as we have described.

7 All traffic delivered to AT&T is delivered
8 over these wireless originating and receiving stations
9 as required by the ICAs. AT&T has argued that a certain
10 amount of traffic is landline originated, and I
11 addressed in my testimony the possibility that certain
12 amounts of traffic might have started on the PSTN.
13 However, we assert that this does not matter because
14 Transcom is an ESP and an end user that originates and
15 terminates traffic, can terminate calls and then
16 originate further communications as part of their
17 enhanced service offerings, is not subject to access
18 charges and is not a common or interexchange carrier.

19 We recognize that the FCC decided in Connect
20 America that the ESP exemption is no longer relevant for
21 intercarrier compensation, but this change in the FCC's
22 longstanding position, indeed the FCC's position at the
23 time Halo launched service, does not change Halo's basic
24 position that Transcom is an end user with the above
25 characteristics.

1 AT&T has said that the FCC rejected Halo's
2 position that its traffic is wireless originated, and
3 the FCC says that the traffic is landline originated and
4 now subject to access. What they don't make clear is
5 that the only thing the FCC decided in Connect America
6 vis-a-vis Halo is that it disagreed with Halo's position
7 that our traffic was wireless originated for purposes of
8 applying the intraMTA rule. We think they erred in this
9 determination and are contesting this ruling, but we can
10 read and we are clear on their position on the intraMTA
11 question.

12 Saying what Halo's traffic is not does not
13 clearly establish what it is. On this point we see that
14 the same sections addressing Halo, the FCC clearly
15 characterized Halo's traffic as a form of transit. And,
16 in fact, AT&T's own counsel in his opening remarks
17 stated that at best Halo's service is a form of
18 transport. This is very important because the FCC
19 clearly and consciously avoided taking any position on
20 whether Halo's service is or is not CMRS, and they
21 certainly did not say that Halo's traffic was now
22 subject to access charges. There are simply no words in
23 the ruling anywhere that state or even imply such
24 things. To the contrary, they note elsewhere in their
25 ruling that transit services are not subject to access

1 charges, and any other reading of the FCC Connect
2 America order is pure fiction.

3 And, in fact, AT&T's witnesses in other state
4 proceedings have testified that AT&T does not pay
5 terminating charges, access or otherwise, when it is
6 providing a transit service. If Halo's high volume
7 service issue in this case is a transit service, why
8 should Halo pay AT&T for something Halo -- AT&T does not
9 pay other terminating carriers?

10 AT&T has further alleged that Halo's service
11 is not CMRS because Transcom does not move its WIMAX
12 CPE, but this means nothing. A wireless customer and a
13 specific customer's wireless device does not need to
14 move in order for the service and the device, in
15 general, to be considered mobile relative to the federal
16 CMRS standards.

17 I have been using Verizon Wireless 3G and 4G
18 mobile access points for years, and I have never once
19 used them while in motion. Every time I use them I am
20 in my home office, in some hotel, or like today in the
21 Florida Commission, in the hearing room. This does not
22 make the Verizon service not CMRS.

23 Moving on, AT&T further claims that Halo is in
24 breach of the ICA because we inserted a charge number in
25 our call signaling data streams. You have heard AT&T

1 claim that this practice was intended to quote, unquote,
2 disguise the true nature of Halo's traffic and make
3 traffic appear local and that this practice somehow
4 fooled their billing systems. These assertions are
5 simply and transparently preposterous.

6 As I explain in my testimony, at no time did
7 Halo alter CPN, or called party numbers, which according
8 to AT&T's own theory is the way of determining call
9 jurisdiction. We obviously disagreed with this for the
10 reasons spelled out in my prefiled testimony which
11 center around the ever expanding and substantial base of
12 VoIP users, the advent of smart phone-based calling
13 apps, and number portability, all of which, if properly
14 reflected in call jurisdiction analysis, would mean
15 lower access charge revenues for AT&T.

16 But putting these real trends and the impact
17 they should have on traffic factors aside, AT&T has
18 demonstrated how easily they can make the rating and
19 jurisdictional determinations they want to proffer based
20 on the call data we faithfully supplied. The Commission
21 should know that Halo's ICA with AT&T all rely on
22 traffic factors for billing. There is no call-by-call
23 rating at any time at any place, so inserting the charge
24 number or not inserting the charge number did not, and,
25 in fact, could not have fooled AT&T's billing systems.

1 So I implore this Commission to ask itself and to ask
2 AT&T exactly how did our alleged effort at deception
3 actually deceive them? How were they harmed by our call
4 signaling practice, and exactly how are we in breach of
5 the ICA on these terms? I respectfully submit that
6 answering such questions objectively and factually can
7 only lead to the conclusion that the allegations being
8 made on this change number matter do not withstand
9 scrutiny.

10 I will not spend too much time now summarizing
11 my testimony on the facility charge dispute question,
12 but I will simply point out that we paid AT&T over
13 \$14,000 in facility charges that are not in dispute.
14 Taken together, my testimony clearly establishes that
15 Halo is not in breach of the ICA on any terms. Halo is
16 not in breach of the AT&T for sending
17 landline-originated traffic, and Halo cannot be in
18 breach of the ICA for not sending accurate call detail
19 as accurate call detail was sent.

20 Before I conclude my testimony, I would like
21 to spend a minute on the question of what value Halo and
22 Transcom are creating for Florida communication
23 consumers. AT&T has argued before other commissions
24 that Halo and Transcom offer no value to communication
25 customers in the states in which both companies conduct

1 business. They have argued that the removal of Halo and
2 Transcom from the marketplace would not be felt by and
3 even known by these consumers; that no calls have failed
4 to terminate when they disconnected service in other
5 states. They seem to base their arguments on the fact
6 that neither Halo nor Transcom have direct relationships
7 with such consumers. This is patently absurd, and I've
8 got to ask when the lack of a direct customer
9 relationship and the delivery of a finished good or
10 service matters for determining value in that ecosystem.
11 I would suspect a lot of folks in this room have
12 iPhones, and I would suspect a lot of the people who
13 have iPhones have never heard of Wintec, Genius
14 Electronic, and other component suppliers. It doesn't
15 change the value derived as an iPhone subscriber.

16 They also obviously assume that other networks
17 are available to handle calls that are disconnected.
18 While AT&T's testimony in other states fail to
19 definitively prove that this is the case in all
20 situations and that calls are not failing when they have
21 disconnected Halo's trunks, they also fail to consider
22 the obvious, and that is when the least-cost provider is
23 removed from the market as implicitly is the case when
24 Halo and Transcom handled the traffic, it necessarily
25 follows that the next higher cost provider, assuming one

1 is available, would get that traffic.

2 Macroeconomic theory would suggest that this
3 has the effect of raising prices for consumers and/or
4 reducing profits for AT&T's competitors. The question
5 this Commission must address is how either of these
6 outcomes are desirable for the people of Florida. The
7 irrefutable fact that major providers of communications
8 services voluntarily choose to purchase Transcom's
9 services and incorporate them into the delivery of
10 service to their consumer customers means Transcom
11 provides a valuable service not only to the service
12 providers, but by extension to the service providers and
13 consumers.

14 Thus, if Transcom and Halo as one of
15 Transcom's service vendors are removed from the
16 marketplace, this means that the preferred provider of
17 service to these service providers is taken away forcing
18 these providers to employ their second best choice,
19 which is presumably more expensive or offers lesser
20 quality than what Transcom and Halo taken together have
21 previously offered.

22 As far as I can tell, these are not desirable
23 outcomes if a healthy and competitive marketplace is
24 desired. Not being able to precisely quantify these
25 benefits does not make them go away. I will leave it to

1 the Commission to determine the net economic impact of
2 the revenue gains and losses in this dynamic situation,
3 but certainly this Commission understands that looking
4 only at the alleged revenue loss by the ILECs without
5 taking into account the economic and market gains of
6 what Halo and Transcom provides is to ignore half the
7 picture.

8 In summary, what we are asking this Commission
9 to do is look past the baseless allegations, gross
10 distortions, and abject hyperbole of the complainants in
11 this case and focus on the facts which are that Halo
12 interpreted and applied rules in a novel but legal way
13 in order to bring value and choice to Florida
14 communication consumers. We are doing just that, and we
15 are committed to continuing to do so in the future. We
16 ask that you deny the relief sought by AT&T in this
17 complaint and refer any matters of regulation to the FCC
18 for further ruling on the core issues.

19 Thank you for your time and attention, and I
20 would invited and encourage the Commission and the
21 Commission staff to ask me any questions you have about
22 the Halo business model or technology that you still
23 require clarification on. Thank you.

24 **MS. LARSON:** I tender the witness for cross.

25 **COMMISSIONER GRAHAM:** AT&T.

CROSS EXAMINATION

1
2 **BY MR. COVEY:**

3 Q. Good afternoon, Mr. Wiseman.

4 A. Mr. Covey.

5 Q. Can you hear me okay?

6 A. I can, sir.

7 Q. Okay. You would agree that at least some of
8 the traffic that Halo sends to AT&T is initiated on the
9 landline networks, correct?

10 A. We would agree that it's possible that some of
11 the traffic that is terminated over our trunks to AT&T
12 might have originated on PSTN networks.

13 Q. Right. And that includes landline networks,
14 correct?

15 A. It possibly could -- I mean, it depends on
16 what the definition of landline is. But subject to
17 common definitions of that, I would say possibly,
18 certainly.

19 Q. Okay. Has Halo taken any steps to prevent
20 landline-initiated traffic from being sent on to AT&T?

21 A. It is Halo's position that Transcom is an end
22 user that originates traffic at the tower and that the
23 traffic in question is not landline originated, it's
24 wireless originated.

25 Q. So backing up a second, I think you agreed

1 that at least some of the net traffic you're sending us
2 could have initiated on landline networks. I'm asking
3 whether you took any steps to prevent that traffic from
4 being passed on to AT&T?

5 A. There would be no reason to because the
6 traffic is originated by an end user over the Halo
7 network over a wireless network. That's the origination
8 as we see it, and so what we have done is taken steps to
9 ensure, consistent with the ICA and our commitment to
10 AT&T, that that traffic originated would not cross MTA
11 boundaries. We have taken very active steps in
12 architecting our network so that AT&T did not receive an
13 intramTA minute the way we are defining origination and
14 termination.

15 Q. Has Halo done any study to see how much of the
16 traffic that Halo sends to AT&T initiated on landline
17 networks?

18 A. There would be no reason to do such a study.

19 Q. Okay. So the answer is no?

20 A. The answer is no.

21 Q. Has Halo submitted any traffic study in this
22 case to counter the call studies submitted by AT&T
23 Florida?

24 A. No.

25 Q. Now I think you said earlier that it's Halo's

1 position that every call Halo receives is originated by
2 Transcom, is that correct?

3 A. That's correct.

4 Q. Okay. And Halo also argued to the FCC in the
5 Connect America proceeding that calls were originated by
6 Transcom, is that right?

7 A. That's correct.

8 Q. And the FCC rejected that position, is that
9 correct?

10 A. They rejected that position with respect to
11 the application of the intraMTA rule.

12 Q. Okay. And in the breach of ICA case between
13 AT&T Tennessee and Halo, the Tennessee Regulatory
14 Authority also rejected Halo's position that Transcom
15 originates calls, is that right?

16 A. I would believe that's correct, yes.

17 Q. And the South Carolina Commission rejected
18 that position, as well?

19 A. Yes.

20 Q. The Georgia staff has rejected that position?

21 A. I haven't read the Georgia staff's comments,
22 but I believe that's true, but I haven't read their
23 comments yet.

24 Q. Okay. The Illinois staff has rejected that
25 position?

1 A. I don't know.

2 Q. You didn't read their testimony?

3 A. Not yet.

4 Q. The hearings are already done in Illinois.

5 You didn't read their testimony?

6 A. I have not read the Illinois -- I have not
7 seen any Illinois findings by the Commission.

8 Q. No, I'm talking about the Illinois staff, I'm
9 sorry.

10 A. I have not seen or read any documents by the
11 Commission or the Commission staff.

12 Q. Okay. And the Missouri staff has opposed
13 Halo's position on origination, is that correct?

14 A. I don't recall their position on origination.

15 Q. Where does Halo say that the origination by
16 Transcom occurs?

17 A. At the tower.

18 Q. Okay. So going back to the example that has
19 been talked about a little bit in this case about a call
20 from a girl in California to her grandmother in Florida,
21 do you recall that example?

22 A. I do.

23 Q. Okay. If Transcom is originating a call at
24 the tower in Florida, what happens to the call from the
25 girl in California to her grandmother?

1 **A.** I mean, generally speaking that call is handed
2 off to Transcom. That call is terminated on their
3 network. Transcom reoriginates communication over its
4 network, the point of interface for that for us is at
5 the tower between the WIMAX CPE and our base station,
6 and then we -- this is an IP communication at this
7 point. The IP packet streams associated with that call
8 are then handled by our switch and our gateways and then
9 ultimately terminated over the tandems to AT&T or a
10 third-party carrier.

11 **Q.** So you're saying that when the girl in
12 California calls her grandmother in Florida her calls
13 terminates with Transcom before it reaches the
14 grandmother?

15 **A.** The application of ESP and end user structure,
16 and this is a legal issue, the way that would be
17 described is an origination by the end user in
18 California, a termination by the ESP, a reorigination by
19 the ESP, and then a further termination. That's my
20 understanding, layman's understanding of the description
21 of how that call would be considered treated from
22 point-to-point.

23 **Q.** Okay. So the girl in California dials her
24 grandma's number in Florida, that call doesn't stop at
25 the Transcom tower, it still goes on to grandma, and the

1 two of them still get to have a conversation with each
2 other, right?

3 A. Of course.

4 Q. Okay. And the girl in California would have
5 no idea that Transcom is involved anywhere in the path
6 of that call, is that correct?

7 A. That is correct. And it's true in most
8 communication networks where there are more providers
9 handling that call than any consumer would ever know,
10 and it's more prevalent than not.

11 Q. Okay. And then the little girl would not be a
12 Transcom customer, correct?

13 A. Not a direct customer, no.

14 Q. Not any kind. There would be no customer
15 relationship of any kind, right?

16 A. No, not between that end -- the little girl
17 and Transcom, nor would there need to be for Transcom
18 and Halo to provide the services and value it provides.

19 Q. Now, Halo has relied on various bankruptcy
20 court rulings for their proposition that Transcom is an
21 ESP, is that right?

22 A. Correct.

23 Q. Okay. And one of those is what you have
24 referred to as the Hale decision, referring to Judge
25 Hale, from 2005, is that right?

1 **A.** That's correct.

2 **Q.** And that decision was vacated on appeal,
3 correct?

4 **A.** I have heard that mentioned, but I don't know
5 ultimately how it all wound up, but I have heard that it
6 was vacated. One of several decisions. And by the way,
7 we're not relying on the ESP exemption anymore, it's the
8 end user status of the customer. But, yes, I am aware
9 that a decision was vacated, but ultimately what
10 happened after that I don't know.

11 **Q.** Okay. Just to clarify, Halo is not relying on
12 the theory that Transcom is an ESP any more as part of
13 the decision in this case?

14 **A.** The FCC has ruled that the ESP exemption is no
15 longer relevant, so our position is still that Transcom
16 is an ESP, but it's the end user status of Transcom
17 that's important. So I will clarify my prior comment.
18 We still believe that Transcom is an ESP and by virtue
19 of that has end user status.

20 **Q.** Okay. Yes, your position is that they are an
21 end user because you say they are an ESP?

22 **A.** Correct. And they are not a carrier, and that
23 there is only two types of entities in the
24 telecommunication world. There are end users and there
25 are carriers. And since they are not a carrier, that

1 only leaves end user as the choice.

2 Q. All right. And for the proposition that
3 Transcom is an ESP you rely on these bankruptcy rulings,
4 correct?

5 A. That's correct.

6 Q. Okay. And we just talked about one of those
7 that has been vacated on appeal, right?

8 A. We have talked about that, yes.

9 Q. Okay. Another bankruptcy order you rely on is
10 the one that confirmed Transcom's bankruptcy
11 reorganization plan in 2006, is that right?

12 A. Yes.

13 Q. Were you involved in any of the proceedings
14 that led to that order?

15 A. No.

16 Q. Have you reviewed the transcript of the
17 hearing that led to that order?

18 A. No, only the order itself.

19 Q. Okay. So do you have any way of knowing
20 whether the question of whether Transcom is an ESP was
21 actually contested and litigated in the proceedings that
22 led to that confirmation order?

23 A. My understanding based on input from counsel
24 is that each of the orders that we have cited address
25 the issue of Transcom's ESP status and ruled on the

1 issue, and we, in turn, relied on those rulings for the
2 determinations we made about the services that we could
3 offer.

4 Q. Okay. I'm not asking for what counsel told
5 you, I'm asking for your understanding of that
6 confirmation order and whether you know whether the
7 issue of whether Transcom was an ESP was actually
8 litigated in the proceedings that led to that order.

9 MS. LARSON: Objection; asked and answered.
10 He said he only knows what he has been advised, and he
11 has not reviewed the transcript. I believe he has
12 answered the question the best he can.

13 MR. COVEY: Well, if he wants to say that he
14 is relying completely on what counsel told him, I guess
15 that's the same thing as saying he doesn't know
16 personally.

17 Is that fair, Mr. Wiseman?

18 THE WITNESS: Should I answer that question?
19 Is there a ruling on the objection?

20 MR. COVEY: I'm just trying to clarify that
21 everything he said is just what his counsel has told
22 him. He doesn't have any first-hand knowledge of what
23 happened in --

24 MS. LARSON: Well, I don't I think that's a
25 fair characterization. I think based on what he has

1 heard from counsel and also his review of the order, I
2 mean, he can read and he can understand some of the
3 terms that have been put forth in the order. But I
4 think the question has been asked and answered.

5 **COMMISSIONER GRAHAM:** Well, I think you're
6 talking about two different questions. He wants to know
7 if he knows about something outside of what his attorney
8 has told him, and he says my attorney hasn't told me
9 this yet. So I guess my question and the question from
10 counsel is do you -- ask the question, again, please.

11 **BY MR. COVEY:**

12 **Q.** Other than what your counsel has told you and
13 other than reading the order for yourself, do you have
14 any knowledge as to whether the question of whether
15 Transcom is an ESP was actually litigated in the
16 proceedings that led to the confirmation order?

17 **A.** No.

18 **Q.** Would the same be true of the Datavon
19 bankruptcy order from 2003 that you cite?

20 **A.** Yes.

21 **Q.** Okay. The final bankruptcy order you rely on
22 is the Global Crossing order from 2007, is that right?

23 **A.** Correct.

24 **Q.** And no AT&T entity was party to that
25 proceeding, is that correct?

1 **A.** Not to my knowledge.

2 **Q.** Now I think you mentioned in your testimony
3 Halo's position that if Transcom is an ESP that means
4 that Transcom would not have to pay access charges, is
5 that correct?

6 **A.** If Transcom is an ESP and an end user then
7 access charges would not apply.

8 **Q.** Okay. So is it also your position that if
9 Transcom is an ESP, then Halo also never has to pay
10 access charges?

11 **A.** It would pay access charges were it delivered
12 interMTA traffic, but we are not delivering interMTA
13 traffic to AT&T, so their access charges would not
14 apply. I would not say that Halo is not subject to
15 access charges. It's not subject to access charges for
16 the traffic that you all are disputing.

17 **Q.** Okay. I'm trying to be clear. Your position
18 is then because Transcom is an ESP, Halo would not be
19 subject to access charges on the traffic sent to it from
20 Transcom. Is that your position?

21 **A.** As long as the traffic was intraMTA in nature.
22 If the traffic crossed an MTA boundary over the Halo
23 network it would be subject to interMTA, which are
24 access-like. I don't know that they are considered in
25 the access regime, but if they are not considered part

1 of the access regime, then the answer would be no, they
2 would not be subject to access charges, but they would
3 be subject to intraMTA rates which are higher than recip
4 comp.

5 Q. If the Commission were to find in this case
6 that Transcom does locally originate every call that it
7 passes to Halo, then any other carrier could also set up
8 a similar arrangement with Transcom, is that correct?

9 A. I'm sorry, Mr. Covey, I missed the first part
10 of your question.

11 Q. I'm sorry. If the Commission were to find
12 that Transcom does locally originate every call that it
13 passes on to Halo, then other carriers would also be
14 able to set up the same type of relationship with
15 Transcom that Halo has, is that right?

16 MS. LARSON: I'm going to object as
17 speculative. It calls for him to speculate about a
18 hypothetical situation.

19 MR. COVEY: This is a lead-in question. I
20 mean --

21 COMMISSIONER GRAHAM: I'm going to allow the
22 question.

23 THE WITNESS: Your question was would it allow
24 other customers or carriers to do business with
25 Transcom, or do you mean other customers or carriers to

1 do business with Halo the same way Transcom does? I'm a
2 little unclear. You're asking me to speculate about
3 Transcom's customers, and I can't do that. I'm not a
4 Transcom representative.

5 **BY MR. COVEY:**

6 Q. Other carries can set up the same type of
7 arrangement with Transcom that Halo has today, correct?

8 A. I'm still a little confused by your question.
9 Certainly other customers could go to Transcom and
10 purchase their services; they are free to do so today.
11 And Halo would be theoretically able to serve other
12 customers like Transcom the way it does today and have
13 the same termination rates and rules apply.

14 So would other customers be able to take
15 advantage of the services that we supply, that Transcom
16 supplies? Obviously the answer to that is yes, and the
17 reason we don't have more is because we have -- we,
18 Halo, have not attempted to get more customers until
19 this litigation matter is resolved.

20 Q. Okay. Let me try it another way. It's your
21 position that Transcom originates the traffic that it
22 sends to Halo, correct?

23 A. Correct.

24 Q. And with the arrangement you set up, the
25 Transcom tower is always next to -- Transcom's equipment

1 and Halo's equipment is always right next to each other,
2 so if you believe that Transcom is originating calls,
3 every call that passes from Transcom to Halo would be
4 intraMTA, correct?

5 A. As long as the call was architected and
6 delivered in the same fashion as it's being delivered
7 today and doesn't cross the MTA boundaries, that would
8 be the case, yes.

9 Q. Right. And if the Commission finds that what
10 Halo is doing is permissible, any other carry could set
11 up the exact same arrangement with Transcom, they could
12 put a tower 150 feet from Transcom's equipment and have
13 a little wireless link between the two and claim that
14 all the traffic is intraMTA, correct?

15 A. Could another company do what Halo is doing
16 and put another tower -- I'm still --

17 Q. Yes.

18 A. Certainly. They're free to do that, and they
19 may be doing that today. I don't know.

20 Q. And if every carry set up that kind of
21 arrangement, then all traffic would be deemed intraMTA
22 that got passed on to AT&T through that type of
23 arrangement, correct?

24 A. If architected the same way as our network is
25 architected.

1 Q. Right. A call could come from anywhere in the
2 world, and as long as it went through that 150-foot
3 wireless link at the end it would be considered intraMTA
4 and not subject to access charges?

5 A. Well, the wireless link could be any distance.
6 But as long as the wireless originating station or
7 receiving station were in the same MTA, then it would be
8 subject to whatever compensation regime we are
9 ultimately determined to be subject to, which we do not
10 believe is access.

11 The FCC's Connect America order describes us
12 as a form of transit. It puts all compensation under
13 the 251(b)(5) regime, which means all the traffic
14 ultimately is moving towards bill and keep anyway. So
15 this is just a question of hastening what the FCC has
16 already started, or getting out in front of what the FCC
17 has already started. So access is going away. If this
18 model is deemed valid and legitimate, I would expect
19 other people would attempt to do it. But at the end of
20 the day we are all marching towards a date certain in
21 the future when the voice service will be zero in terms
22 of intercarrier compensation, so there's a window of
23 opportunity here.

24 Q. Okay. It's your position that the calls
25 Transcom passes to Halo are intraMTA and not subject to

1 access charges, correct?

2 A. Correct.

3 Q. Okay. If every other carrier set up the same
4 type of arrangement with Transcom, nobody would ever pay
5 access charges to AT&T or the other LECs that terminate
6 calls, correct?

7 MS. LARSON: I'm going to object as asked and
8 answered. I think just because he doesn't like the
9 answer doesn't mean he gets to keep asking the question.

10 MR. COVEY: Well, I didn't like the answer
11 because it was nonresponsive and went on and on and on.

12 COMMISSIONER GRAHAM: I agree with the
13 objection. I think he's answered that question.

14 MR. COVEY: You think he has answered that
15 question? Okay. That's fine.

16 BY MR. COVEY:

17 Q. Turning to the charge number issue. Halo
18 admits that it inserted a Transcom charge number on
19 every call that it sent on to AT&T until December 29,
20 2011, is that right?

21 A. Correct.

22 Q. And Halo did that because it thought Transcom
23 was the financially responsible party for the traffic,
24 is that right?

25 A. Among the reasons, that was one of them.

1 **Q.** And the reason that you thought Transcom was
2 the financially responsible party was because Halo views
3 Transcom as the originator of the traffic, is that
4 correct?

5 **A.** Correct. And Transcom was the one that Halo
6 bills for the usage. There's no one else we bill. So
7 as far as Halo is concerned, there is no other
8 financially responsible party other than the one that we
9 sent the bill to, which was Transcom.

10 **Q.** All right. If Transcom was actually the
11 originator of the traffic, why wouldn't its number be
12 listed as the calling party number instead of having to
13 insert it as a charged party number?

14 **A.** Because that's not standard industry practice
15 and that would be manipulating CPN information, which
16 would be a violation of regulation.

17 **Q.** Right. And it would be manipulating CPN
18 because Transcom is not the actual calling party on that
19 traffic, correct?

20 **A.** Which is not unusual. That's the whole
21 purpose of a charge number. You insert a charge number
22 when there's a party involved in the call other than the
23 person who picked up a phone. So that's customary
24 practice, and that was the whole reason for a charge
25 number in the first place. Charge number and CPN being

1 different telephone numbers, different financially
2 responsible parties.

3 Q. Right. And you mentioned the person that
4 picked up the phone, it's that person's phone number
5 that shows up as the calling party number, correct?

6 A. Correct.

7 Q. And that's because they're the ones that
8 originated the call, correct?

9 A. That was the point of first origination.

10 MR. COVEY: I have nothing further, Your
11 Honor.

12 COMMISSIONER GRAHAM: Staff.

13 MR. HARRIS: Yes. Thank you. We have just a
14 few questions, I think.

15 **CROSS EXAMINATION**

16 **BY MR. HARRIS:**

17 Q. The first question I have is when AT&T's
18 Witness Neinast was on the stand, were you present for
19 his testimony?

20 A. I was.

21 Q. I believe one of the Commissioners asked Mr.
22 Neinast some questions about wireless customers using
23 Transcom as a carrier? Do you recall that discussion?

24 A. Vaguely.

25 Q. I want to give you a chance to sort of respond

1 to that. I believe that Mr. Neinast -- and I don't want
2 to mischaracterize this; I'm really just seeking
3 information.

4 A. Sure.

5 Q. That Witness Neinast sort of said that he
6 didn't believe that there would be any reason for a
7 wireless carrier to use Transcom's service because there
8 was no money involved. Do you recall that?

9 A. Yes.

10 Q. Do you agree with that, or do you have any
11 comments you would like to make on that testimony? And
12 that is, specifically, would a wireless carrier have a
13 reason to use Transcom's services?

14 A. Well, I guess the best way I can answer that
15 is wireless calls are flowing over the Transcom/Halo
16 network originated by wireless carriers, there is reason
17 for that. I could speculate here in realtime about the
18 reasons why they would do that in economic incentives,
19 but I generally feel that people do what is in their
20 best economic interests. And if they're doing it, then
21 there has got to be a reason for it. That reason may
22 not have anything to do with termination rates, for
23 example, because there may be a bill and keep
24 implication, but it may have to do with traffic
25 aggregation and transport costs, as an example, for

1 aggregating traffic and delivering traffic in a more
2 cost-effective fashion. So the only thing I can say is
3 traffic is flowing, it's wireless originated in that
4 sense, and, therefore, it is kind of prima facie
5 evidence that there is some economic reason for them to
6 do that.

7 Q. Thank you. The second question that I have,
8 and this comes from your testimony starting on Page 45,
9 and also an interrogatory you responded to that was
10 Staff's Interrogatory Number 5.

11 A. Uh-huh.

12 Q. And specifically, I'm trying to get a better
13 understanding of exactly the service that Halo provides
14 to Transcom, the telephone exchange service
15 specifically. And if you could help me to understand
16 exactly what the Halo company provides to Transcom, what
17 Transcom provides to Halo as far as this exchange
18 service goes?

19 A. So Halo offers itself out as a common carrier
20 where it would allow any customer retail, or in this
21 case any ESP type customer to access the Halo network on
22 common carrier terms, which means we accept traffic
23 that's delivered to us and do with it what needs to be
24 done with it.

25 So in this case we have a telephone -- a

1 wireless telephone exchange service where we establish
2 points of presence around the country both in terms of
3 MTA presence as well as a terminating footprint
4 capability, and we offer that footprint to our customers
5 and say you can access the network at these points. You
6 can choose to locate your CPE to access the Halo network
7 wherever you choose to do so. In this case, Transcom
8 chose to locate it at the tower, but they could have
9 chosen to locate it anywhere. And you then originate
10 traffic with us at that tower.

11 We have at that point switching
12 infrastructure, an IP softswitch, media gateway, SPC
13 session border controllers that take that IP package
14 stream and decipher it and determine where it needs to
15 go. And if it is a voice call, in the case of the
16 Transcom service, voice packets are initiated through an
17 initiation session over the wireless link. Basically,
18 the wireless-based wireless CPE initiates a SIP
19 communication with the tower, and then once that SIP
20 communication is established, now data and signaling
21 call steams can occur managed by the Halo switch and
22 media gateways for ultimate termination by the ILECs.

23 So what we provide is an origination and
24 termination exchange service that is done over wireless
25 facilities. It is similar to what other providers

1 provide where there is a rate deck and a footprint that
2 is offered to the customer. The only nuance here is
3 that we have wireless access points where the point of
4 interface occurs between the customer, in this case
5 Transcom, and Halo in the case of the service provider.

6 Now, there are other elements to the
7 relationship that you may or may not care about or want
8 clarification on, but Halo purchases switching capacity
9 from Transcom. We purchase media gateway port capacity
10 from Transcom. We purchase collocation services from
11 Transcom. Those are all done under separate MSA
12 arm's-length contractual agreements between the
13 entities. Those are just aspects of the relationship
14 that are different from Transcom customer Halo provider.

15 **Q.** So if Larry Com wanted to transact with you
16 for these same services, would your contract with
17 Transcom allow you to purchase this switching service
18 and things to service me, as a customer of you?

19 **A.** Yes. In fact, you asked questions of Mr.
20 Drause about what our network can and can't do. We have
21 retail, individual retail customers in Texas, not in
22 Florida, that have portable WIMAX modems, and they are
23 getting Internet and voice services over our tower.

24 As an example of a retail customer, you asked
25 about is it point-to-point; this is a

1 point-to-multi-point network. So whether you're a
2 consumer customer, an individual living in a household,
3 we have examples of customers that are using our service
4 for voice and data originating traffic over the tower
5 using wireless base stations. If you are a small
6 business and you wanted the same sort of broad band
7 Internet and voice service, you could get that from us.

8 If you are a high volume customer, a
9 Transcom-like customer, then we have a separate set of
10 MSAs that would apply to you for the services that I
11 just described. Those are different from the retail
12 services that we offer. But if you came to me as a high
13 volume customer and wanted the same thing that Transcom
14 gets, then we have an MSA in place to deal with that.
15 We don't have any such customers, and our agreements
16 with Transcom would not get modified for that, we would
17 just buy more port capacity, as necessary, to deal with
18 the traffic volumes that we are handling.

19 Q. And what is a MSA exactly?

20 A. A master service agreement.

21 Q. Master service agreement. You heard, and you
22 referred to this Witness Drause speaking about the Green
23 Cove Springs site?

24 A. Yes.

25 Q. If I lived in Green Cove Springs, he said you

1 do this in Texas, but not in Florida. If I lived in
2 Green Cove Springs, could I have this equipment to
3 communicate with your tower site?

4 **A.** As long as you were in the RF footprint of the
5 tower. We only have one tower in Green Cove Springs,
6 and so it only provides service to a given azimuth
7 geography of that town. But if you are in geographic
8 coverage of the tower, then you would be able to get
9 service. You would be able to get service today if you
10 called us.

11 **Q.** But you're not providing that service in Green
12 Cove Springs at this time?

13 **A.** I'm not marketing the service, because I don't
14 have the marketing dollars to do so. But if somebody
15 called me from Green Cove Springs and said I want to get
16 service today, we would ship you a modem and you would
17 be able to activate that service as long as wherever you
18 wanted to use that service was within the RF coverage of
19 the base station. We're just not expending any
20 marketing dollars because we don't have the marketing
21 dollars to expend.

22 **Q.** I understand. One last question, and you may
23 or may not be able to answer this of your own personal
24 knowledge. Would these exchange services you provide
25 and you purchase some things from Transcom, could

1 Transcom go ahead and get the license to become an
2 exchange access server and sort of cut you out of this
3 process?

4 **A.** In theory, but in doing so it would become a
5 common carrier. It would have to become a common
6 carrier, because only common carriers, whether it's a
7 CLEC or a wireless carrier like ourselves, can get
8 interconnection with the ILECs the way it's set up. So
9 in order for Transcom to do that, it would have to shift
10 itself from being an end user communications intensive
11 ESP to being a common carrier, and I suspect it would
12 not want to do that.

13 **MR. HARRIS:** May I have a moment?

14 (Pause.)

15 **MR. HARRIS:** Thank you, Mr. Chairman. We
16 don't have any further questions.

17 **COMMISSIONER GRAHAM:** Commissioners?

18 **COMMISSIONER BROWN:** Good afternoon.

19 **THE WITNESS:** Good afternoon.

20 **COMMISSIONER BROWN:** I just have a few
21 questions.

22 **THE WITNESS:** Uh-huh.

23 **COMMISSIONER BROWN:** Why did Halo choose the
24 2003 T-Mobile ICA, when its business model is somewhat
25 nonconventional?

1 **THE WITNESS:** Because the process of
2 negotiating -- let me step back and say I was not
3 involved in the early interactions with AT&T in terms of
4 seeking interconnection, so I don't honestly know
5 whether an attempt was made to negotiate one from
6 scratch or adopt one. Adoption is obviously -- if you
7 can adopt an agreement that is acceptable to you is the
8 preferred approach because it's faster. Negotiating an
9 interconnect agreement with a carrier is a very, very
10 time-consuming process. I have done many, and generally
11 speaking it takes about a year and a half to negotiate
12 an interconnect agreement with a common carrier.

13 So obviously for that purpose, if you wanted
14 to launch services around the country and you need -- in
15 our case, we have 28 just with AT&T alone, that would be
16 an immensely expensive and time-consuming process. So
17 if you can find an adoptable agreement, and the parties
18 sit down and decide that that agreement is appropriate
19 for the situation, then it's cheaper and faster to do it
20 that way. And our view is that's exactly what we did in
21 the AT&T case.

22 Now, I would say, Commissioner, that both --
23 and especially in Halo, we want -- Halo desired to
24 operate in other markets other than the AT&T markets.
25 For example, in the Qwest territories, in the Verizon

1 territories. And we did not -- because we could not
2 get -- we could not find an adoptable agreement that was
3 acceptable to us or the other party, and the process of
4 negotiating one stalled. So, in effect, we adopted with
5 AT&T because we saw other agreements out there that we
6 felt allowed us to do what we wanted to do. We amended
7 that agreement to ensure that it was in compliance with
8 the services that we thought we were offering and, so,
9 therefore, it got us to where you wanted to be faster.

10 **COMMISSIONER BROWN:** I understand that. You
11 say you contend that Halo is entitled to amend the
12 existing ICA to be in compliance with the new rules, the
13 FCC rules. How could Halo do that if it is in breach of
14 the agreement?

15 **THE WITNESS:** Well, if there's a determination
16 that it's in breach, then the question is what do you do
17 about that. You can either terminate the agreement; you
18 can renegotiate the agreement; you can change the
19 provisions; we can change our business model. There's
20 any number of ways to deal with that. So we're not
21 presupposing -- you all have not made a decision yet
22 that we are in breach. Once you make that decision,
23 then it's up to parties to decide and you all to decide
24 as regulators what options we have to reconcile that.

25 Our view is that if we are in breach of the

1 agreement based on the determinations that are alleged,
2 then the FCC Connect America order establishes a
3 framework whereby we believe the parties can reach an
4 agreement based on the FCC's terms, the FCC structure.
5 That obviously would not be the same thing that we have
6 in place today, for example. There wouldn't be a notion
7 of intra A recip comp the way it's in effect today, so
8 you would have the traffic, the traffic types and the
9 traffic factors and the applicable compensation
10 structure as the FCC Connect America order lays out.

11 So there is nonaccess traffic, there is access
12 reciprocal compensation traffic. There would be traffic
13 factors that would apply to that. Where our traffic in
14 this case, we're presuming the application of the FCC
15 Connect America order to a renegotiation, what I would
16 want you to understand is if there is access reciprocal
17 compensation traffic, by definition that traffic is
18 subject to access. And so if we fit the FCC Connect
19 America order -- fit an ICA to the order, we would
20 acknowledge that there would be a traffic type called
21 access recip comp, there would be a traffic factor that
22 would apply, and there would be a rate that would apply.
23 And the FCC has laid out a glide path from intrastate,
24 interstate, 0007 bill and keep, and that we would be
25 willing to apply that glide path to the portion of the

1 traffic which is access recip comp.

2 So if there is a dispute and if there is a
3 breach of the issue, then we feel the FCC Connect
4 America order provides us all the framework we need to
5 renegotiate the terms and resolve the core dispute.

6 **COMMISSIONER BROWN:** Thank you. You did
7 answer my question. Thank you very much.

8 **THE WITNESS:** I'm sorry it was so long.

9 **COMMISSIONER BROWN:** No, it was very thorough.
10 Thank you.

11 I know AT&T has also asked you this question,
12 but just for clarity, throughout your Prefiled Direct
13 Testimony you indicate that Transcom is an ESP and it's
14 not a carrier, and originates the communications
15 wirelessly to Halo. But also in your testimony you
16 indicate that most of the calls probably start on other
17 networks before they come to Transcom for processing.
18 Those other networks being landlines. Can you just
19 reconcile those two concepts in your testimony?

20 **THE WITNESS:** So the core question here is
21 what does origination mean, right?

22 **COMMISSIONER BROWN:** Right.

23 **THE WITNESS:** And where can it apply? We are
24 not disputing that Suzy, or Grandma, or whoever she is,
25 or he is using some device. It could be cable company

1 customer using a VoIP service, it could be a wireless
2 handset, it could be a regular POTS telephone, picked up
3 the phone, or picked up their handset, or got on their
4 Skype computer and initiated a call. What we're saying
5 is that there is a framework related to ESPs that
6 establishes two calls, and this was all introduced to me
7 when I got involved in Halo, was there is a two-call
8 theory. And so the way you reconcile it is you apply
9 the two-call theory associated with ESPs to the Halo
10 model, and you add a wireless element to it that allows
11 the completion of the service offering.

12 So I'm not sure how I can reconcile it other
13 to say there is a two-call theory that applied when Halo
14 was formed. We believe it still does apply. We believe
15 the FCC has made some rulings on it that both challenge
16 that as well as say that no matter what you think, it
17 looks as though -- this looks like Halo is providing a
18 form of transit service and where access clearly does
19 not apply to forms of transit services. And AT&T does
20 not pay access in transit services. So that would be
21 the best way that I could address that issue.

22 We are not saying that these calls never
23 started anywhere else. There are cable companies
24 involved, wireless carriers involved, IP service
25 companies involved, potentially ILECs involved, but you

1 have a two-call theory that needs to be reconciled.

2 **COMMISSIONER BROWN:** Okay. Thank you.

3 And the last question. A curiosity question.
4 You may not have information about this, but how did the
5 Transcom/Halo relationship evolve? It seems that they
6 are somewhat very closely related.

7 **THE WITNESS:** Of course. Yes, so this --
8 pardon, this may take a few minutes, but cut me off at
9 any time.

10 **COMMISSIONER BROWN:** We have all day.

11 **THE WITNESS:** In 2005, the founder and owner
12 of Transcom, I don't know that they were called Transcom
13 at the time, but the entity that ultimately became
14 Transcom had a desire to participate in the wireless
15 broadband business. There were presentations going back
16 to 2005, as far as I can tell, where there were efforts
17 to try to get that business off the ground, a very
18 traditional broadband wireless business. And that
19 business -- that business plan kind of moved along,
20 moved along, and met with all the challenges, some of
21 which I describe in my testimony about being able to
22 access the spectrum, access to viable technology, a
23 viable business model. How do you make that model work?
24 So that person by the name of Scott Birdwell, who is the
25 minority owner of Transcom, had a vision and a desire to

1 participate in that business.

2 In the 2008/2009 time frame there was a
3 convergence of that desire to be in the broadband with
4 Transcom's desire to expand its network, and some things
5 fell into place like the 36/50 spectrum and some other
6 things where Scott and his advisors determined that
7 there was an opportunity to get that business launched
8 by having an anchor customer providing these wholesale
9 services that we have been talking about to fund and
10 enable that business to get off the ground.

11 So he is the common link, in a sense. And the
12 way Transcom and Halo came together is a recognition
13 that there were some rules and regulations that would
14 allow that convergence and use of common infrastructure
15 to occur. And I can only say it was validated by the
16 degree of effort and energy that was expended. In fact,
17 my background as the former president and chief
18 operating officer of a wireless broadband company was to
19 bring somebody like me in to enable the build-out and
20 growth of a retail business on the back of a wholesale
21 service offering.

22 So where we located our base stations, how
23 much money and effort we spent on the retail marketing
24 side, the efforts we expended on the CPE device side was
25 all meant to drive that business, because we believe

1 that there was a major opportunity there. There was a
2 major vacuum there for serving those customers, and we
3 believed the Halo model was the way to bring wireless
4 broadband to these people in an economically viable way.
5 Absent that cash flow that comes from the wholesale
6 business, the business model for providing these
7 services over wireless facilities in broadband markets
8 is very, very difficult. I spend 15 years personally
9 trying to make that model work, and it is very, very
10 difficult. That's why you don't see much of it. You
11 see pockets of it, but you don't see much of it because
12 the return on investment is so long. Capital doesn't
13 flow to it, so, therefore, the federal government has to
14 come in and provide stimulus money to convince people to
15 go off --

16 **COMMISSIONER BROWN:** Let me narrow your answer
17 down a little bit.

18 **THE WITNESS:** Yes, please.

19 **COMMISSIONER BROWN:** The relationship between
20 Transcom and Halo. Halo has two employees. I know that
21 your testimony indicates that the board of directors are
22 separate, but very closely assimilated. I just want to
23 understand what would happen in the bankruptcy
24 proceedings for Halo if Halo no longer operates? What
25 happens to Transcom? Does Transcom no longer operate?

1 **THE WITNESS:** Definitely not. And I don't
2 have intimate details of the Transcom business, but what
3 I do know is that I'm not -- I, as Halo, am not
4 terminating all of Transcom's traffic. Transcom has
5 other terminating vendors to handle its traffic. And if
6 Halo were to go away, Transcom would find -- Transcom's
7 volume would either suffer and/or it would find other
8 terminating vendors to handle that traffic, or seek
9 other arrangements for that traffic to be terminated.

10 Transcom is not going to go away, as far as I
11 can tell, based on what it does today and the options it
12 has available to it. And I would also add that the
13 people who I report to ask me questions all the time
14 about why I don't have more traffic than I have on the
15 network. If I've got this incredible competitive
16 advantage on price, we're a nit in terms of the volume
17 of traffic that we are handling. So that suggests to
18 me, Commissioner, that the price that I offer to
19 Transcom must be being matched by others in the
20 marketplace, otherwise I would have and Transcom would
21 have a lot more volume than we have.

22 We are collectively, both companies, bit
23 players in this industry in terms of the volume that's
24 being handled. So if we have the significant
25 competitive advantage, we have wasted it, and that is

1 just not a rational conclusion that you can reach. So
2 the conclusion I reach from that -- and this is straying
3 a little bit away from your question about ownership and
4 so forth -- is that the pricing advantage that we have
5 alleged to have had cannot be the case. The price out
6 there is at or below what we are getting it for and
7 selling it for, otherwise we would have a lot more
8 volume.

9 **COMMISSIONER BROWN:** Okay. I appreciate your
10 additional details. Thank you.

11 **THE WITNESS:** You're welcome.

12 **COMMISSIONER GRAHAM:** Commissioner Balbis.

13 **COMMISSIONER BALBIS:** Thank you.

14 And thank you, Mr. Wiseman, for your
15 testimony. I have a couple of questions. And just to
16 follow-up on Commissioner Brown's line, so you indicated
17 that Transcom does have other end users, is that
18 correct?

19 **THE WITNESS:** They have other terminating
20 vendors. Halo is not the exclusive terminating vendor
21 for Transcom's traffic. So Transcom has multiple
22 customers who I don't know. I know they are generally
23 big cable companies and such, and they have multiple
24 ways in which their traffic is handled.

25 Since they don't terminate traffic themselves

1 to LECs, for example, they have multiple vendors. We
2 are just one of the vendors that Transcom uses for the
3 termination of its traffic. So you've got Transcom and
4 its customers, you've got Halo and multiple vendors that
5 Transcom sends traffic to that we don't handle.

6 **COMMISSIONER BALBIS:** And do you have any --
7 does Halo have any other relationships with companies
8 similar to Transcom?

9 **THE WITNESS:** Do we were other customers like
10 Transcom?

11 **COMMISSIONER BALBIS:** Yes.

12 **THE WITNESS:** No. And we don't because once
13 the litigation started it wasn't in our best interest or
14 that customer's best interest to drag them into the
15 fight we saw occurring, so we basically just stopped
16 pursuing any other high volume customers.

17 **COMMISSIONER BALBIS:** Okay. And then I think
18 two more questions. Before coming on to Halo, you
19 indicated you were a consultant, I guess, from 2003 to
20 2010. Were you aware of any other similar relationships
21 that existed prior to the Halo/Transcom relationship, or
22 is this the unique only situation where this type of
23 setup exists?

24 **THE WITNESS:** Was I aware or am I aware of
25 other entities that have employed the Halo model to do

1 what Halo is doing?

2 **COMMISSIONER BALBIS:** Yes.

3 **THE WITNESS:** No. Actually, no, that is
4 not -- there is an entity in Texas. I don't know the
5 details of that, I thought I heard was trying to do
6 something like we were doing, but I don't know the
7 details of them.

8 **COMMISSIONER BALBIS:** Okay. And then my last
9 question on -- and I believe it is Page 55 of your
10 testimony, you indicated that the practice of using the
11 billing number for the customer number was stopped
12 December 29th, 2011?

13 **THE WITNESS:** Correct.

14 **COMMISSIONER BALBIS:** And why was it stopped
15 and did that coincide with the FCC order issuance?

16 **THE WITNESS:** It was perfectly coincided.
17 Once the order came out, counsel, our lead regulatory
18 counsel advised us that based on the FCC Connect America
19 order that the FCC was changing its practices with
20 respect to call signaling. In fact, there has been a
21 lot of filings on those signaling practices. Those
22 signaling practices were not specifically directed to
23 Halo.

24 The FCC is modifying its regulations on
25 signaling practices. Our regulatory counsel advised us

1 to be in conformance with those practices. It would be
2 best to some signaling a charge number. I have seen
3 probably a dozen requests by various carriers to the FCC
4 to modify or abate those call signaling rules for
5 various technical reasons. So from my perspective, the
6 FCC -- its order was not picking on Halo. It's changing
7 rules with respect to signaling, and Halo's counsel
8 advised us to be consistent with that we have to stop
9 that practice, and we did.

10 **COMMISSIONER BALBIS:** Okay. Thank you.

11 That's all I have.

12 **THE WITNESS:** You're welcome.

13 **COMMISSIONER GRAHAM:** Commissioner Brown?

14 **COMMISSIONER BROWN:** No.

15 **COMMISSIONER GRAHAM:** I don't have any
16 questions. So redirect?

17 **MS. LARSON:** No redirect.

18 **COMMISSIONER GRAHAM:** Okay.

19 Sir, thank you for your testimony.

20 **THE WITNESS:** You're welcome.

21 **COMMISSIONER GRAHAM:** Exhibits?

22 **MS. LARSON:** At this time we would offer RW-1
23 and RW-2, which I will ask staff to remind me what they
24 have labeled those in their master exhibit list.

25 **COMMISSIONER GRAHAM:** It's Exhibit 25 and 26.

1 We will enter those two into the record.

2 (Exhibit Numbers 25 and 26 admitted into the
3 record.)

4 **COMMISSIONER GRAHAM:** And we have already
5 entered 38 into the record. Is that all we have on
6 witnesses?

7 **MS. LARSON:** That's correct.

8 **COMMISSIONER GRAHAM:** Okay. All right. So,
9 Staff, is that concluding our hearing?

10 **MR. HARRIS:** I believe so, Commissioner. I'm
11 not aware of any other matters.

12 I would remind the parties that the transcript
13 should be produced by July 23rd, and your briefs are due
14 on August 13th.

15 **COMMISSIONER GRAHAM:** Is there any other last
16 minute housekeeping details?

17 **MR. HARRIS:** None from staff.

18 **COMMISSIONER GRAHAM:** All right.

19 That all being the case, I thank you all for
20 your time and your patience and for not making me stay
21 here until 7:00 o'clock tonight.

22 And that all being said, we are adjourned.
23 Thank you very much. Travel safe.

24 (The hearing concluded at 1:06 p.m.)
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STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 23rd day of July, 2012.



JANE FAUROT, RPR
FPSC Official Commission Reporter
(850) 413-6732